

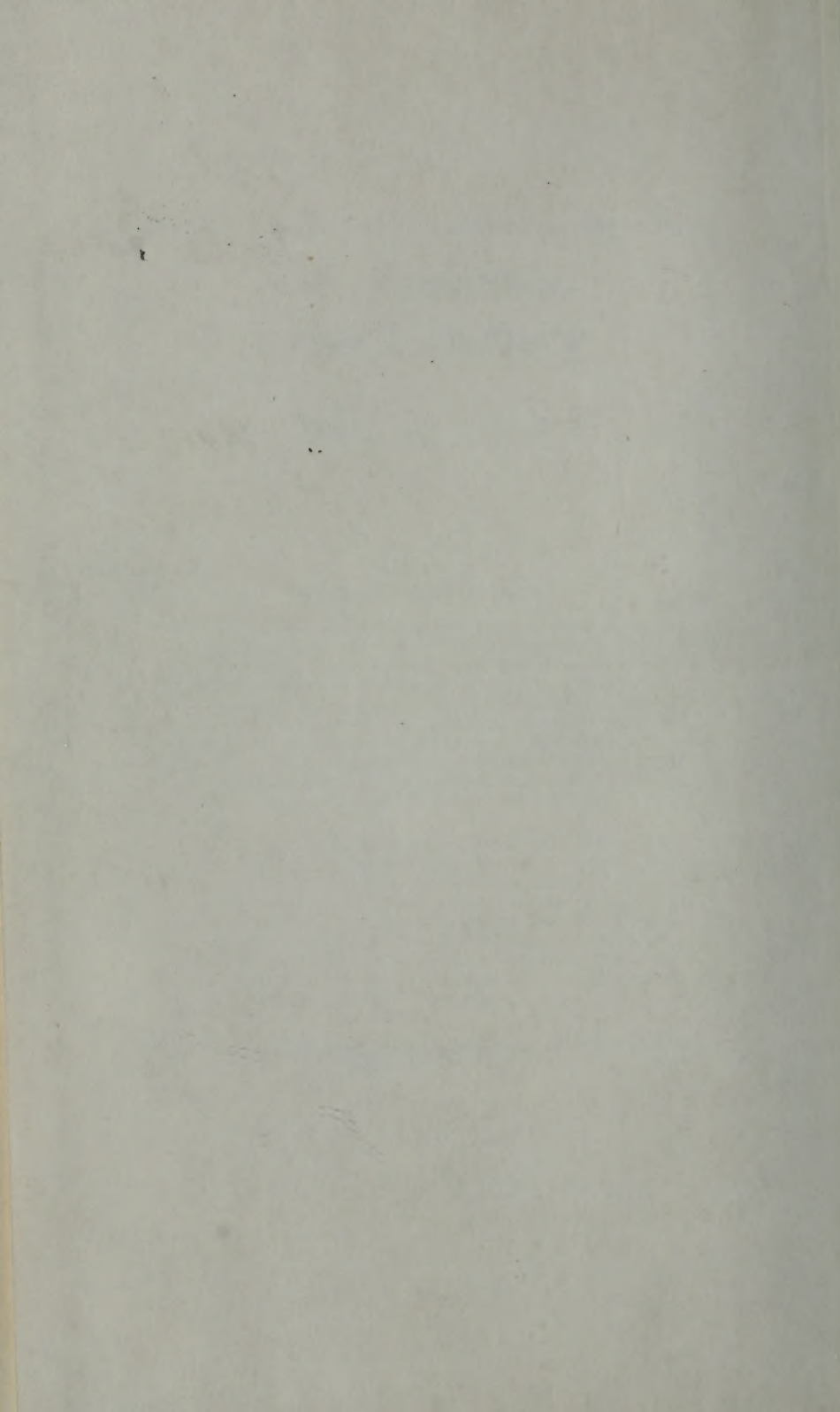
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No. 10148

United States

Circuit Court of Appeals

For the Ninth Circuit.

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

vs.

J. G. BOSWELL COMPANY and CORCORAN
TELEPHONE EXCHANGE,

Respondents.

Transcript of Record

In Seven Volumes

VOLUME VI

Pages 2435 to 2943

FILED

SEP 15 1942

PAUL P. O'BRIEN,
CLERK

Upon Petition for Enforcement of An Order of the
National Labor Relations Board

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Upon Petition for Enforcement of An Order of the
National Labor Relations Board

(Testimony of Samuel Brenes.)

Cross Examination

(Continued)

Q. (By Mr. Clark) First I will ask you, Mr. Witness, if you will examine this original letter dated January 11, 1939, that Mr. Walsh has just handed me, and tell me whether or not that is the original of the letter we have been discussing.

[1953]

A. (Examining document) Yes, sir.

Q. And did you sign it? A. Yes, sir.

Q. Very well.

On or about the date it bears?

A. Yes, sir.

Mr. Clark: The letter reads as follows, Mr. Examiner:

“Corcoran, California

“January 11, 1939

“National Labor Relations Board

“Twenty-First Region

“610 South Main Street

“Los Angeles, California

“Gentlemen:

“We understand that the American Federation of Labor is pretending to represent the employees of the J. G. Boswell Company of Corcoran and Tipton, California.

“Please be advised that more than 95 percent of the employees are members of the J. G. Boswell Company Employees' Association of

(Testimony of Samuel Brenes.)

Corcoran and Tipton, which was organized November 28, 1938, under the National Labor Relations Act, with constitution and by-laws which you are invited to inspect.

“We want no interference on the part of the American Federation of Labor. Our members are of the unanimous opinion that their purposes can best [1954] be served through the local organization without outside interference.

“Very truly yours,

“J. G. BOSWELL COMPANY
EMPLOYEES’ ASSOCIA-
TION OF CORCORAN AND
TIPTON

“GOVERNING BOARD——”

Will you please tell us whose signature the first one is? [1955]

Trial Examiner Lindsay: If he knows all the signatures, let him read them.

Mr. Clark: I can read the rest of them probably quicker.

The Witness: J. W. Hubbard, O. W. Busbee, R. B. Lloyd, S. F. Brenes, W. F. Willoughby, E. M. Roberson.

Q. (By Mr. Clark) Did you ever get any response to that letter that you remember except a complaint in this action?

A. I don’t believe so.

Q. Now——

Mr. Mouritsen (Interrupting): May I ask a

(Testimony of Samuel Brenes.)

question on voir dire about that?

Mr. Clark: Surely.

Voir Dire Examination

Q. (By Mr. Mouritsen) Do you handle the correspondence in this organization, Mr. Brenes?

A. No, sir. The secretary does.

Q. In fact, you don't have anything to do with the correspondence, isn't that correct?

A. Except indirectly.

Cross Examination

(Continued)

Q. (By Mr. Clark) Well, you signed the letter which I have just read, didn't you? A. Yes.

Trial Examiner Lindsay: That is in the record. Proceed.

Mr. Clark: Very well. [1956]

Q. Now, on your direct examination, Mr. Brenes, you told Mr. Mouritsen that so far as you could remember, there never had been any committee appointed to take up the matter of labor relations with the Company, and that no contract or working arrangement had been entered into between the Employees' Association and the Company.

Do you remember that testimony?

A. Yes, sir.

Q. I am correct in stating, however, am I not, that there was a communication to the Company concerning the obtaining of employment for the

(Testimony of Samuel Brenes.)

members of your Association? A. Yes, sir.

Q. In that regard, I want to direct your attention to the minutes of the special meeting of the Board, of the Governing Board, called on February 17th in this year, and I will ask you whether I am correct in stating that the following motion was made and carried at that meeting:

“After a lengthy discussion a motion was made to investigate the possibility of finding employment for any member who was laid off due to lack of work around the plant.

This motion was made by S. F. Brenes, and seconded by R. B. Lloyd.

“It was also suggested that any man being laid off should contact Mr. Hubbard and register his name.”

That took place at that meeting, did it not?

[1957]

A. Yes, sir.

Q. And subsequently, at a meeting of April 13th, 1939, will you tell us whether or not a further motion was made by you, and seconded by Mr. Nichols, as follows:—

Mr. Mouritsen (Interrupting): I will object to the reading of this upon the ground it is outside of the scope of Mr. Clark's authority in this matter, as defined by himself; that it is not probative of any of the issues as to whether or not there is a connection between this organization under investigation and the J. G. Boswell Company, and Mr.

(Testimony of Samuel Brenes.)

Clark has stated that his only purpose in objecting to questions asked this witness and to any cross examination that he is making—I submit that this examination is beyond that scope.

Mr. Clark: This bears directly upon the contention which is made by inference, Mr. Examiner, upon the part of the Board that this Association is a mere sham and has served no purpose whatsoever, so far as the employees are concerned. That is the only thing which could be in the minds of these gentlemen by trying to point out that no contract was ever entered into between the Association and the Company. I am attempting to show what was done, so far as the betterment or so far as the help to the members of the Employees' Association are concerned.

Now, so far as the method of doing this is concerned, I will call your Honor's attention to this fact, that I objected [1958] to this very manner of examining this witness on Mr. Mouritsen's examination, and I was overruled, and he stood here and read from these minutes and asked the question.

Now, I am asking only the same privilege.

Trial Examiner Lindsay: Just a moment. Mr. Clark, you were not overruled. I directed at that time that Mr. Mouritsen hand the document that he had in his hand back to the witness, which he did do, and then he questioned the witness while the witness held the document in his hand on material relevant to it.

(Testimony of Samuel Brenes.)

Those are the facts in the record.

Mr. Clark: And Mr. Mouritsen looked over his shoulder and framed his questions.

Trial Examiner Lindsay: You had the book in your hands.

Mr. Clark: You hold it, then.

(The document referred to was passed to the witness.)

Trial Examiner Lindsay: Now, just a moment.

I believe that attorneys, at least, should be cautious about making statements of those types for any record. Now, an attorney has the right to object, and I am affording that right. I haven't ruled on the matter yet, before you started talking, Mr. Clark. In fact, I didn't have a chance to rule.

Now, will you read back the objection, Mr. Reporter, the objection and the question?

(The record referred to was read by the reporter, as [1959] set forth above.)

Trial Examiner Lindsay: You do not contend, Mr. Clark, that there is a contract?

Mr. Clark: No, I don't, but I do contend this organization is bona fide, and I do point to that which it has done for the benefit of its members, as evidence of the fact that it is genuine.

Trial Examiner Lindsay: Well, are you putting yourself in the position of representing the Independent?

Mr. Clark: Absolutely not. These questions are asked on behalf of—

(Testimony of Samuel Brenes.)

Trial Examiner Lindsay (Interrupting): May I see that document?

Mr. Clark (Continuing):—the respondents in this proceeding. So far as I know, the Employees' Association is not represented. [1960]

Trial Examiner Lindsay: They have a right to be represented if they so desire and I gave them that privilege.

Mr. Clark: And they said they didn't want to be.

Trial Examiner Lindsay: They said they didn't.

Mr. Clark: The paragraph I had in mind—

Trial Examiner Lindsay (Interrupting): I will find it.

Mr. Clark (Interrupting):—is the third paragraph.

Very well.

(The document referred to was passed to

Trial Examiner Lindsay.)

Mr. Clark: May I make a further statement to your Honor with regard to one of the allegations in the pleading?

Trial Examiner Lindsay: What one?

Mr. Clark: I will direct your attention to paragraph 15 which appears on page 4 of our copy of the fourth amended complaint, or rather the amended complaint, paragraph 15.

It says: "On or about——"

Trial Examiner Lindsay (Interrupting): Wait a minute. I haven't given you the privilege, yet.

(The document referred to was examined by
Trial Examiner Lindsay.)

(Testimony of Samuel Brenes.)

Trial Examiner Lindsay: You may read it if you wish.

Mr. Clark: Very well.

Now, may I have my question down as far as it went before the objection? [1961]

Trial Examiner Lindsay: Bearing in mind I haven't ruled as yet on the objection.

Mr. Clark: I understand.

(The record referred to was read by the reporter, as set forth above.)

Mr. Clark: Now I will begin the question over, Mr. Reporter.

Q. Now, will you tell us then, Mr. Brenes, whether or not subsequently, on April 13, 1939, a further motion was made by you and seconded by Mr. Nichols directing the secretary of the Employees' Association to write the company, that is, J. G. Boswell Company officials——

Mr. Mouritsen (Interrupting): Mr. Examiner, I submit——

Mr. Clark (Interrupting): Just a minute, please.

Mr. Mouritsen (Continuing): This is an improper method of getting into the record something in an indirect method that counsel cannot possibly get in by a direct method. I submit, Mr. Examiner, that it is highly improper.

Mr. Clark: I will submit that objection. It is cross examination so far as I am concerned.

Trial Examiner Lindsay: As I understand it, you are reading into your question the things which

(Testimony of Samuel Brenes.)

are actually in that document?

Mr. Clark: I am asking my question from the document the same as Mr. Mouritsen did on his examination, and now the wit- [1962] ness is even holding it and I am just looking over his shoulder.

Trial Examiner Lindsay: Well, you may ask it.

Mr. Clark: Very well. Let me have it, again, please—I will reframe it, Mr. Reporter, and let me start all over again.

Q. Now, Mr. Brenes, am I also correct in stating that subsequently on April 13, 1939, at a special meeting of the board of governors of the Association, a further motion was made by you and seconded by Mr. Nichols directing——

Mr. Mouritsen (Interrupting): Mr. Examiner, I submit this is highly improper. However, I am making no objection.

Mr. Clark: Very well. Thank you for the interruption.

Q. Directing the secretary to write to the company officials at both Tipton and Corcoran, California, calling attention to the fact that the Association is keeping a list of unemployed members, with their qualifications, and requesting the management to get in touch with the Labor Relations Committee when new men are needed.

Was such a motion passed? A. Yes, sir.

Q. All right.

Now, pursuant to that motion, was such a communication addressed to the J. G. Boswell Company? A. Yes, sir.

(Testimony of Samuel Brenes.)

Q. And in that connection, Mr. Brenes, I direct your atten- [1963] tion to what purports to be a copy of a letter dated April 15, 1939, and addressed to the J. G. Boswell Company of Los Angeles, California, and signed by H. G. McKeever, secretary, and I will ask you whether or not you saw the original of that before it was mailed.

A. (Examining document) Yes, sir.

Q. Was the original mailed to the J. G. Boswell Company at Los Angeles? A. Yes, sir.

Q. Very well.

I will ask permission, may it please the Examiner, to read the copy into the record.

“April 15——”

Mr. Mouritsen (Interrupting): I will object to the reading——

Mr. Clark (Interrupting): It is annexed to the minutes.

Trial Examiner Lindsay: At least show it to counsel.

Mr. Clark: I think he has been through all the minutes. At least, I saw him looking through them.

(The document referred to was passed to

Mr. Mouritsen.)

Mr. Mouritsen: Yes.

Mr. Clark: You have seen that, haven't you?

Mr. Mouritsen: No, I haven't seen, but I would be glad to have it in the record.

Mr. Clark: Very well. Then it goes in with your consent, [1964] I take it?

(Testimony of Samuel Brenes.)

Mr. Mouritsen: Yes.

Mr. Clark: All right.

This letter then, Mr. Examiner, reads as follows:

“April 15, 1939

“J. G. Boswell Company

“Los Angeles,

“California

“Gentlemen:

“At the annual meeting of the J. G. Boswell Company Employees' Association on April 5, 1939, the question was raised from the floor regarding the unemployment of the Association members and a motion was made requesting the governing board of the Association to notify company officials of both Corcoran and Tipton that the Association is keeping a list of unemployed members, with their qualifications, and requesting the management to get in touch with the Association when new men are needed.

“At a meeting of the governing board of the Association on April 13, 1939, the secretary was directed to perform this duty, which is accomplished herewith. I do, however, wish to emphasize the fact that this is merely a request. We are not agitating for a closed shop but we do want to do everything [1965] reasonable and just to keep our members employed.

“Very truly yours,

“H. G. McKEEVER,

“Copy to Mr. Louis T. Robinson, Corcoran, and

“copy to Mr. Leon Jones, Tipton.”

(Testimony of Samuel Brenes.)

I understood you to say that the original of that was mailed to the company? A. Yes, sir.

Q. Is that right? A. Yes, sir.

Q. Have you attended all the meetings of this Employees' Association, Mr. Brenes?

A. Yes, sir.

Q. At any time whatsoever has the J. G. Boswell Company in any manner attempted to interfere with the conduct of those meetings or to dominate them?

Mr. Mouritsen: Objected to as calling for hearsay——

Mr. Clark (Interrupting): Submit it.

Mr. Mouritsen (Continuing):——evidence and a conclusion of the witness. [1966]

Trial Examiner Lindsay: Well, it is not sustained on the objection of hearsay.

Mr. Mouritsen: It calls for a conclusion.

Trial Examiner Lindsay: It is sustained as to the form of the question.

Q. (By Mr. Clark) At any time whatsoever, Mr. Brenes, has any representative from the Company, from the J. G. Boswell Company, attended your meetings?

Mr. Mouritsen: Objected to as vague and indefinite. What is "a representative?"

Mr. Clark: I suppose a representative is one who is authorized.

Trial Examiner Lindsay: I think, Mr. Clark, you should name the individual in the question.

(Testimony of Samuel Brenes.)

Mr. Clark: I will submit the question for a ruling and then re-frame it if——

Trial Examiner Lindsay (Interrupting): You may reframe your question.

Mr. Clark (Continuing)——if the objection is sustained.

Is the objection sustained, Mr. Examiner?

Trial Examiner Lindsay: I said you may re-frame your question, Mr. Clark.

Mr. Clark: Very well.

Q. At any time, Mr. Brenes, has the Company, that is, the J. G. Boswell Company, interfered with the conduct of your [1967] Association?

Mr. Mouritsen: Objected to as calling for a legal conclusion, and a self-serving declaration.

Trial Examiner Lindsay: Sustained.

Q. (By Mr. Clark) At any time has Mr. Louie Robinson attended any of your meetings?

A. No, sir.

Q. Or has Mr. Gordon Hammond attended any of your meetings? A. No, sir.

Q. This minute book we have been examining contains all the minutes, doesn't it?

A. Yes, sir.

Q. Has the Company in any way attempted to control the policies of your organization?

Mr. Mouritsen: Objected to as calling for a legal conclusion of the witness, and a self-serving declaration.

Trial Examiner Lindsay: Sustained.

(Testimony of Samuel Brenes.)

Mr. Clark: It calls for objective action. It is possible for me to go through the many ways that that can be done. I am asking for an ultimate fact.

Trial Examiner Lindsay: Sustained.

Mr. Clark: Very well.

Q. On your direct examination, you answered one of Mr. Mouritsen's questions in which he used the phrase, "the men were requested to leave the plant." [1968]

Q. Do you remember making an answer to a question such as that? A. Yes, sir.

Q. Did you ever hear anyone request any of the employees to leave the J. G. Boswell plant?

A. No, sir.

Q. Am I correct in stating that in answering that question, you simply were attempting to fix the incident of November 18th, that is, the uprising of the men? A. That is right.

Q. You also said that the meeting of employees which was held on the evening of November 18th was held in the office of the Company.

Will you please tell us whether there is a so-called office building on the Company property?

A. Yes, sir.

Q. How large a building is it? Approximately how many rooms does it consist of?

A. Oh, at least eight or ten, I believe.

Q. All right.

And would a fair description of that building be, or a fair name for that building be an administra-

(Testimony of Samuel Brenes.)

tion building? A. I believe it would.

Q. In other words, the offices of the draftsmen are there too, are they? [1969] A. Yes, sir.

Q. Is that where Mr. Hubbard does such work as he does at the plant? A. Yes, sir.

Q. Who actually prepared Board's Exhibit 18, that is, the original of Board's Exhibit 18, namely, the constitution and by-laws?

A. Mr. Clement.

Q. And you paid Mr. Clement with the funds of the Association? A. Yes, sir.

Q. Referring to the election of your officers, am I correct in stating that on both occasions concerning which you have testified in your direct examination, the officers of the Employees' Association were elected by secret ballot?

A. That is right.

Mr. Clark: That is all.

One further question, please, Mr. Examiner, if I may.

Q. Where, in this administration building, on the night of November 18th, was the gathering of the men held, if you remember?

A. It was in what we refer to as the outer office.

Q. Is that a kind of a lobby? A. Yes, sir.

Q. Are the men in the plant accustomed to come in there?

Mr. Mouritsen: Objected to as incompetent, irrelevant and [1970] immaterial.

(Testimony of Samuel Brenes.)

Trial Examiner Lindsay: Sustained.

Mr. Clark: Very well.

Q. Is the Company bulletin board there?

A. There is one of them there.

Mr. Clark: That is all.

Redirect Examination

Q. (By Mr. Mouritsen) Now, Mr. Clark asked you whether or not the officers of the Association were elected by secret ballot.

As a matter of fact, at the meeting of November 28th, 1938, which I show you, Mr. Hubbard was the only man nominated for president, wasn't he?

A. Yes, sir.

Q. And don't the minutes so show that?

A. Yes, sir.

Q. And Mr. Oscar W. Busbee was the only man nominated for vice-president, isn't that correct?

A. Yes, sir.

Q. And Mr. E. M. Roberson was the only one nominated for secretary, isn't that correct?

A. Yes, sir.

Q. There were two candidates for treasurer, isn't that correct?

A. Yes, sir. [1971]

Mr. Clark: That is the witness's job.

Mr. Mouritsen: Now, in order that Mr. Brenes might take the minute book back with him intact, would counsel have any objection if I read into the record the names contained on Board's Exhibit 19?

Mr. Clark: Not at all. Or to save time, those

(Testimony of Samuel Brenes.)

sheets could be taken out and probably copies substituted.

Go ahead and read them in if you prefer to read them.

Q. (By Mr. Mouritsen) Mr. Brenes, I will ask you to read into the record all of the names that appear on Board's Exhibit 19, which has previously been identified.

Trial Examiner Lindsay: Eighteen.

Mr. Mouritsen: No, Board's Exhibit 19.

The Witness: William F. Parrish.

Mr. Clark: Just a moment. I understand the witness is reading the names in order, is that right?

The Witness: That is right.

Mr. Mouritsen: I will so direct him.

The Witness: John Duncan, Tom Donohue, A. R. Derichsweiler.

Trial Examiner Lindsay: Spell that?

The Witness: D-e-r-i-c-h-s-w-e-i-l-e-r.

Jack Owings, H. R. Murphy, J. A. Derichsweiler, H. F. Workman, B. Winslow, A. Gardner, Walter Derichsweiler, S. A. Brown, Ygnacio Galvan,

[1972]

Trial Examiner Lindsay: Spell that.

The Witness: G-a-l-v-a-n.

Trial Examiner Lindsay: The first name?

The Witness: Y-g-n-a-c-i-o.

W. C. Nichols, R. H. Fallin, C. C. Hastin, Sam Robinson, A. L. Hood, John Winslow, Fred A. Parrish, O. W. Bowron, T. E. Lowry, C. J. Felder,

(Testimony of Samuel Brenes.)

William D. Blankenship, Herman Langford, Bruce Clar, D. V. Burdine, S. L. Todd, J. W. Tisdale, E. Liggett, V. Rood, Robert C. Springer, Guy Poole, H. Compton, Stan Salisbury, W. E. Williams, Oscar White, R. E. White, Clark Mitchell, K. V. Hammond, Paul Morris, Noland Butcher, Walter Abbott, E. K. Ely, L. G. Robinson, Don Mummert, W. D. Robinson, Clyde Sitton, J. W. Miller, Hugh Greer, F. E. Ely, W. L. Connally, O. W. Busbee, E. M. Roberson, T. W. Hammond, John A. Carpenter, J. T. Mize. [1973]

Mr. Mouritzen: And may I at this time withdraw Board's Exhibit 19 in order that it may be returned to the witness?

Mr. Clark: So stipulated, Mr. Examiner.

Mr. Walsh: May the reporter be instructed to insert in the exhibit file a sheet with the notation that at page blank in the record the exhibit has been withdrawn? May also that apply to Exhibit 12?

Trial Examiner Lindsay: Yes, and let that sheet of paper also contain a statement that the contents of the exhibit itself in each case were read into the record.

Q. (By Mr. Mouritsen) Now, I note that Board's Exhibit 19 was signed by a man named Lowry.

Do you recall whether or not he is a foreman at one of the Boswell farms?

A. No, sir; this man works in our shops.

Q. Board's Exhibit 18 is only a certified copy,

(Testimony of Samuel Brenes.)

so you have no objection to our retaining that, is that correct? A. Yes.

Q. Will you look on Board's Exhibit 19 again, Mr. Brenes, and give me the initials of that Lowry?

A. T. E., it is.

Q. T. E.? A. Yes, sir.

Q. Do you know whether or not K. C. Hammond is also known as Kelly Hammond? [1974]

A. That is right.

Q. I believe you stated that Gordon Hammond, hadn't attended any of the meetings, is that correct? A. Yes, sir.

Q. However, Tom and Joe Hammond had attended a number of the meetings, had they not?

A. Yes.

Mr. Mouritsen: Nothing further.

Mr. Clark: No further questions from us. Thank you.

Trial Examiner Lindsay: I have just one or two.

Q. Did I understand you to say that you made out the pay-checks for the men in the office?

A. I don't always make the checks. I make out the payroll from which the checks are made. I sometimes make the checks.

Q. And are you the only one in the office doing that particular work?

A. No, there is another man that does the payroll work with me.

Q. And who is he? Who does he take his directions from?

(Testimony of Samuel Brenes.)

A. You mean in regard to payrolls?

Q. Yes, this man that works with you.

A. From me, I guess, if there are any orders to be given. We know what we are supposed to do and we do it.

Q. Do you give him directions?

A. When there are any to be given. [1975]

Q. Have you given him any that you know of?

A. I can't think of any definite ones I did.

Q. Well, what is your best recollection?

A. Well, we both work in the office together, and I make suggestions to him. I am the senior bookkeeper there, and I make suggestions.

Q. Does he carry out those suggestions?

A. He usually does.

Q. What do you mean "usually"? Has he ever refused to carry them out?

A. He might offer other suggestions to which I agree in preference to the ones I made.

Q. But you are the head bookkeeper there?

A. I guess you might call me that.

Trial Examiner Lindsay: That is all.

Mr. Clark: No further questions.

(Witness excused.)

Mr. Clark: Now, Mr. Examiner, may I suggest to counsel for the Board that Mr. Boyett be put on the stand and asked the questions which remain of him concerning having gone through the minutes, and then he was to tell us whether or not he found

any further reference to the Boswell Company or this matter.

Trial Examiner Lindsay: I don't have anything to say [1976] about how an attorney should proceed.

Mr. Clark: I said if he wants to.

Mr. Walsh: I have talked to Mr. Boyett and he told me he has gone through the record this morning and found no further notation about the Boswell dispute, and I don't desire to recall him to the stand.

Mr. Clark: The minutes you refer to are those of the Associated Farmers of Kings County?

Mr. Walsh: Yes.

Mr. Clark: May Mr. Boyett be released?

Mr. Walsh: Yes.

Trial Examiner Lindsay: It is almost 4:30, isn't it?

Mr. Mouritsen: Yes, I was going to suggest, Mr. Examiner, since we are about to go into a different phase of the case, perhaps we might take an adjournment at this time and that it now appears that the Board will probably complete the presentation of its case by tomorrow or at least Thursday morning.

Mr. Clark: I see. Should we be ready by 2:00 o'clock tomorrow afternoon?

This is off the record?

Trial Examiner Lindsay: Yes. Off the record.

(Here followed discussion off the record.)

Trial Examiner Lindsay: On the record.

Mr. Clark: May we have time to prepare our side of the case if necessary? [1977]

Trial Examiner Lindsay: Yes.

(Whereupon, at 4:25 o'clock p. m., an adjournment was taken until 9:30 o'clock a. m., Wednesday, June 7, 1939.) [1978]

American Legion Hall
Corcoran, California
Wednesday, June 7, 1939.
9:30 o'clock a. m. [1979]

PROCEEDINGS

Trial Examiner Lindsay: Hearing called to order.

Mr. Mouritsen: Mr. Examiner, the Board will now proceed with the presentation of the case against the Corcoran Telephone Exchange, and this phase of the case will be handled by my associate, Mr. McTernan.

Mr. Clark: Now, may it please the Examiner, in looking over the transcript of Monday's hearing, just hastily—I don't want it understood that I am limiting myself to the fact that there are no other corrections that I would like to suggest—but in looking over Monday's transcript hastily, I notice on page 1720 in the testimony of Mr. Johnston what I think is an error. That is a typographical error.

The question which I refer to reads this way—this is a question by Mr. Clark of Mr. Johnston—“Did you see a man named Ralph Gilkey there that morning—” referring to January 30th at the Boswell plant—I am wrong—the question is this:

“Did you see a man named Joe Mackey there that morning,” referring to January 30th.

“A. No, sir.”

Now, I think the answer was “Yes, sir,” and particularly in view of the following, which I will read to your Honor—

Mr. Mouritsen (Interrupting): I will stipulate—

Mr. Clark (Interrupting): Let us finish this, Mr. Mourit- [1981] sen.

“Q. Are you sure of that?

“A. I am almost sure.

“Q. What did you mean by that?

“A. I am just as sure as the rest of them.

“Q. Are you just as sure that Joe Mackey was there as you are that the others were there?

“A. Yes.”

So I think the “No, sir,” to which I first referred at line 25, page 1720, should be “Yes, sir.”

Mr. Mouritsen: I am of the same opinion, Mr. Examiner.

Trial Examiner Lindsay: I can tell you in just a moment. I know that is correct, I know that he did say “Yes, sir,” but we will look it up. (Examining transcript notes.)

That is Mr. Johnston, isn't it?

Mr. Clark: Johnston, yes, sir.

Trial Examiner Lindsay: Yes, that is correct.
The answer is "Yes."

Mr. Clark: May that be changed, Mr. Examiner?

Trial Examiner Lindsay: Oh, yes.

Mr. McTernan: Mr. Glenn.

Are you through, Mr. Clark?

Mr. Clark: Nothing further at this time.

C. H. GLENN,

a witness called by and on behalf of the National Labor Re- [1982] lations Board, being first duly sworn, was examined and testified as follows:

Mr. Wingrove: I might state at this time, Mr. Examiner, that Mr. Clark and Mr. Painter have been authorized to collaborate with me in connection with the handling of the presentation of the case for the Corcoran Telephone Exchange.

Mr. Clark: In the same manner as we have with the Boswell Company. [1983]

Direct Examination

Q. (By Mr. McTernan) Will you state your name, please.

A. C. H. Glenn; G-l-e-n-n.

Q. Your address? A. Corcoran.

Q. What is your business or occupation, Mr. Glenn? A. Farmer.

Q. Have you any other business?

A. Telephone business.

(Testimony of C. H. Glenn.)

Q. Is that personal business or is that a corporation?
A. Corporation.

Q. What office do you hold in the corporation?

A. President and manager.

Q. Is the name of that corporation the Corcoran Telephone Exchange?

A. Incorporated; yes, sir.

Q. Are you the chief stockholder?

A. Yes, sir.

Q. When was the corporation organized?

A. I think it was incorporated some time in 1923.

Q. What is the extent of the operations of the Corcoran Telephone Exchange?

Mr. Clark: Now, just for the record, Mr. Examiner, I would like to make an objection on behalf of the Associated Farmers of Kings County to the reception of any evidence under [1984] the charge or in support of the allegations of the complaint against the Corcoran Telephone Exchange, and against the Associated Farmers of Kings County, upon the ground that nowhere in the complaint is it alleged that the Associated Farmers acted in any respect in the interest of the Corcoran Telephone Exchange, which is, as your Honor knows, under the Act, in the definition of an employer. In other words, the complaint does allege, with respect to the Boswell matters, that the Associated Farmers acted in the interest of Boswell in this and that and

(Testimony of C. H. Glenn.)

the other matter, but there is no such allegation even as between the Corcoran Telephone Exchange and the Associated Farmers, so I would like to make a formal objection to the admission of any evidence with respect to the Corcoran Telephone Exchange as against the Associated Farmers of Kings County. I will simply take your Honor's ruling so we can go on from there.

Trial Examiner Lindsay: Well, there isn't any question pending as a matter of record which touches upon that.

Mr. Clark: I don't hear you.

Trial Examiner Lindsay: There isn't any question pending now which touches upon any testimony.

Mr. Clark: No, there isn't. I am simply making the general objection. I made it at the time when I thought we were about to get into some real evidence beyond the gentleman's name and address and what he does. I am simply making [1985] a general objection to the reception of any evidence, you see.

Trial Examiner Lindsay: Your motion may stand in the record and I will rule on it when the occasion arises.

Mr. Clark: Very well.

And may it be deemed, Mr. McTernan, that that objection runs to this gentleman's entire testimony?

Mr. McTernan: So stipulated.

Mr. Clark: Very well. [1986]

(Testimony of C. H. Glenn.)

Mr. McTernan: Will you read the last question?

(The question referred to was read by the reporter, as set forth above.)

The Witness: You mean the limit?

Q. (By Mr. McTernan) Yes. Where does it operate?

A. In the city limits of Corcoran.

Q. Have you any—can you give us how much line the Exchange owns, cables?

A. May I refer to some notes that I took from the records?

Q. Yes, if you wish.

Mr. Clark: May I ask some preliminary questions regarding the memorandum that Mr. Glenn has to refresh his recollection from?

Trial Examiner Lindsay: Yes.

Mr. Clark: Mr. Glenn, you have just stated you are about to refer to some notes; is that correct?

The Witness: Yes, sir.

Mr. Clark: And you are holding in your hand a paper upon which certain information appears?

The Witness: Yes, sir.

Mr. Clark: Can you tell us from what source you took that information?

The Witness: I took this from the report that we made to the State Railroad Commission, the 1938 report.

Mr. Clark: Was that for the year 1938? [1987]

The Witness: Yes, sir.

Mr. Clark: That is all.

(Testimony of C. H. Glenn.)

Q. (By Mr. McTernan) That is technically from December 21st, 1937 to December 21st, 1938, isn't that correct?

A. That is correct, as regards the toll.

Mr. Clark: And the figures you are about to give us, are those filed by you with the Railroad Commission of California in the annual report of the Corcoran Telephone Exchange?

The Witness: That is true.

Mr. McTernan: Will you read the last question?

(The question referred to was read by the reporter, as set forth above.)

The Witness: In cables you want first?

Q. (By Mr. McTernan) What I want, Mr. Glenn, is the total mileage of all of the line and cables operated by the Corcoran Telephone Exchange.

A. 139.9 miles.

Q. What is that figure? Line and cables combined?

A. Yes, sir, aerial lines and cables.

Q. Now, Mr. Glenn, do your lines connect with the lines of any other telephone company?

A. No, our lines do not.

Q. Well, how do you get telephone messages out of Corcoran to cities outside of Corcoran?

A. The cables are attached to our boards of the central office. [1988]

Q. The cables of what?

(Testimony of C. H. Glenn.)

A. The Pacific Telephone and Telegraph Company.

Q. And is that a subsidiary of the American Telephone and Telegraph?

A. I don't know.

Mr. Wingrove: May I have that last question and answer read?

(The record referred to was read by the reporter, as set forth above.)

Mr. McTernan: May these be marked for identification?

(Thereupon, the documents above referred to were marked as Board's Exhibits Nos. 20-A and 20-B, respectively, for identification.) [1989]

Mr. Clark: Would you direct my attention, Mr. McTernan, to the portion of this document that you have handed me that you consider relevant?

Mr. McTernan: I will direct you to certain portions which are especially relevant.

(The document referred to was passed to Mr. Clark.)

Mr. Clark: May I ask you whether or not in this exhibit there is any reference to the Corcoran Telephone Exchange?

Mr. McTernan: No.

Mr. Clark: And the only reference you are concerned with has to do with the connection, if any, between Pacific Telephone and Telegraph

(Testimony of C. H. Glenn.)

Company and the American Tel and Tel, or Bell System?

Mr. McTernan: Well, that is—this one (Indicating) shows the operations of the Pacific Telephone and Telegraph Company.

Mr. Clark: And I understand the Corcoran Telephone Exchange isn't mentioned in it?

Mr. McTernan: That is right.

And this is the report of the American Telephone and Telegraph Company (Indicating). I direct your attention to page 18 and page 31.

Mr. Clark: And by this you are referring to Board's Exhibit 20(b) for identification, is that right? [1990]

Mr. McTernan: Yes.

Mr. Clark: And do I understand that so far as this exhibit is concerned, or this document, rather, Board's Exhibit 20(b) for identification, that there is no reference in it to the Corcoran Telephone Exchange?

Mr. McTernan: That is correct.

Mr. Clark: But the reference you have in mind is of the Pacific Telephone and Telegraph Company?

Mr. McTernan: Yes.

Q. Mr. Glenn, I hand you Board's Exhibit for identification No. 20(a) and 20(b) and ask you if you have ever seen either of these.

A. (Examining documents) I don't think I have.

(Testimony of C. H. Glenn.)

Mr. Clark: Mr. Examiner, I have no objection whatsoever to the authentication of these documents. In other words, I will concede that they are what they purport to be, namely, so far as Board's Exhibit 20(a) for identification is concerned that it is a copy of the annual report of the Pacific Telephone and Telegraph Company for the year 1938, and that so far as Board's Exhibit 20(b) for identification is concerned, it is the annual report, or copy of the annual report, of the American Telephone and Telegraph Company for the year 1938; but I want to reserve my objection to the competency of these documents as exhibits in this case.

My concession only goes to the authentication of them. [1991]

Mr. McTernan: I offer Board's Exhibit 20(a) which is the annual report of the Pacific Telephone and Telegraph Company and Board's Exhibit for identification No. 20(b) which is the annual report of the American Telephone and Telegraph Company in evidence.

Mr. Clark: To which we object on the ground that each exhibit is incompetent, irrelevant and immaterial and is hearsay as to the respondent Corcoran Telephone Exchange and the other respondents in this case, and further that there has been no showing whatsoever concerning the Board's jurisdiction over the respondent Corcoran Telephone Exchange or that said respondent acted in

(Testimony of C. H. Glenn.)

the interest of anyone who is subject to the Board's jurisdiction or is an employer within the meaning of the National Labor Relations Act.

And may I add to the objection that there is no connection shown between the Corcoran Telephone Exchange and either of the companies mentioned in the documents under consideration, that is, the American Telephone and Telegraph Company or the Pacific Telephone and Telegraph Company.

Trial Examiner Lindsay: Board's Exhibits 20(a) and 20(b) are received in evidence.

(Thereupon the documents above referred to were received in evidence and marked Board's Exhibits 20(a) and 20(b).)

BOARD'S EXHIBIT NO. 20(a)

Not Released Until Thursday, February 16th

ANNUAL REPORT of THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY FOR 1938

140 New Montgomery Street
San Francisco

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Throughout the Pacific Coast, in addition to the number of telephones we own and operate,—1,853,229 as of December 31, 1938—there were also

(Testimony of C. H. Glenn.)

283,922 telephones served by 309 other companies with which our toll and long distance lines connect. At the end of the year, inclusive of 56,899 rural and private line telephones, there was a total of 2,194,050 telephones in the Pacific Coast territory in which we operate. All of the telephones which we operate on the Pacific Coast and those independently owned and operated by connecting companies have complete connection with the Bell System of which our company is a constituent part. At the end of the year, the Bell System telephones totaled, in round figures, 15,-761,000, and they interconnected with about 4,124,-000 served by connecting companies, all connected by wire or radio telephony with 17,915,000 telephones in other countries and continents. About 93 per cent of the world's 40,600,000 telephones are now interconnectible and the Pacific Coast has promptly available this world-wide service.

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[Endorsed]: Filed 6-7-39.

BOARD'S EXHIBIT NO. 20(b)
ANNUAL REPORT
of the
AMERICAN TELEPHONE
AND TELEGRAPH COMPANY
FOR 1938
195 Broadway
New York

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(Testimony of C. H. Glenn.)

Report of the Directors
of
American Telephone and Telegraph Company
New York, March 1, 1939.

To the Stockholders:

During 1938, the Bell System* had a net gain of about 430,000 telephones compared with 876,000 in 1937. More than 60 per cent of the gain in 1938 was made in the last four months of the year. At the end of the year there were 15,761,000 telephones in service.

The average daily number of telephone conversations during the year was 69,900,000, an increase of about 1,100,000 over 1937. While there were about 1.7 per cent more local conversations, there were 1.4 per cent fewer toll and long distance conversations than in the previous year. At the end of the year, however, the daily number of toll and long distance conversations was somewhat higher than at the end of 1937.

Including the telephones of about 6,500 connecting telephone companies and more than 25,000 connecting rural lines, there were at the end of the year approximately 19,900,000 telephones in the United States, practically any one of which can be connected promptly with any other and with 93 per cent of the telephones in the world.

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AMERICAN TELEPHONE AND TELEGRAPH COMPANY

December 31, 1938

I. PRINCIPAL TELEPHONE SUBSIDIARIES (a)

	Headquarters	Company Telephones	Connecting Telephones (b)
New England Tel. and Tel. Co.....	Boston, Mass.	1,223,400	46,200
New York Bell Tel. Co.....	New York, N. Y.	2,541,700	210,600
New Jersey Bell Tel. Co.....	Newark, N. J.	703,000	12,900
The Bell Tel. Co. of Pennsylvania.....	Philadelphia, Pa.	1,233,500	212,200
The Diamond State Tel. Co.....	Philadelphia, Pa.	43,200	200
The Chesapeake and Potomac Tel. Co.....	Washington, D. C.	239,700	300
The Chesapeake and Potomac Tel. Co. of Baltimore City	Baltimore, Md.	262,400	3,100
The Chesapeake and Potomac Tel. Co. of Virginia.....	Richmond, Va.	196,000	55,400
The Chesapeake and Potomac Tel. Co. of West Virginia...	Charleston, W. Va.	130,700	25,200
Southern Bell Tel. and Tel. Co.....	Atlanta, Ga.	1,144,100	335,000
Christian-Todd Tel. Co.....	Hopkinsville, Ky.	5,100	700
The Ohio Bell Tel. Co.....	Cleveland, Ohio	713,500	296,700
Michigan Bell Tel. Co.....	Detroit, Mich.	680,200	102,600
Indiana Bell Tel. Co.....	Indianapolis, Ind.	222,000	250,600

(Testimony of C. H. Glenn.)

(Testimony of C. H. Glenn.)

AMERICAN TELEPHONE AND TELEGRAPH COMPANY

December 31, 1938

I. PRINCIPAL TELEPHONE SUBSIDIARIES (a)

(Continued)

	Headquarters	Company Telephones	Connecting Telephones (b)
Wisconsin Tel. Co.....	Milwaukee, Wis.	363,200	172,600
Illinois Bell Tel. Co.....	Chicago, Ill.	1,407,800	296,900
Northwestern Bell Tel. Co.....	Omaha, Nebr.	659,200	516,200
The Tri-State Tel. and Tel. Co.....	St. Paul, Minn.	131,200	83,300
Dakota Central Tel. Co.....	Aberdeen, S. D.	30,800	20,900
Southwestern Bell Tel. Co.....	St. Louis, Mo.	1,484,600	577,700
The Mountain States Tel. and Tel. Co.....	Denver, Colo.	492,600	40,700
The Pacific Tel. and Tel. Co.....	San Francisco, Cal.	1,137,700	168,900
Bell Tel. Co. of Nevada.....	San Francisco, Cal.	13,700	4,900
Southern California Tel. Co.....	Los Angeles, Cal.	701,800	152,600

Note: The United Tel. Co., formerly included herein, was merged with Southwestern Bell Tel. Co. in 1938.

(a) Subsidiaries controlled indirectly are indented under the controlling company.

(b) Comprises telephones of about 6,500 connecting companies and over 25,000 connecting rural lines.

[Endorsed]: Filed 6-7-39.

(Testimony of C. H. Glenn.)

Q. (By Mr. McTernan) Mr. Glenn, directing your attention to the fiscal year 1938, that is, the fiscal year of the [1992] Telephone Exchange, which year I understand runs from December 21st, 1937 until December 21, 1938, could you tell me what the gross income of the Exchange was.

A. \$15,897.39.

Q. Now, that figure you have given me is income from subscribers and toll calls?

A. Yes.

Q. Does it include any other items?

A. No, we have no other income.

Q. Does it include any taxes you have collected on those calls? A. Yes, sir.

Q. Well, how much is that item of taxes collected?

Mr. Clark: For what collected?

Mr. McTernan: Taxes collected on toll calls.

The Witness: The taxes amounted to \$937.35 during that period.

Q. (By Mr. McTernan) As I understand it, when you collected those taxes, you collect it as agents for the taxation authority?

A. That is true.

Q. So your gross income from subscribers and toll calls would be the figure you have given me, minus the amount of tax you mentioned?

A. That is true. [1993]

Q. What is that figure? A. \$14,960.04.

Q. Now, that income—how much was income from toll calls?

(Testimony of C. H. Glenn.)

Mr. Clark: May we have the toll call explained by the witness before we get into that?

Q. (By Mr. McTernan) What is a toll call?

A. It is an out of town call that is put in through Hanford. The amount was \$5,248.48.

Q. All these figures you have given—they are for the fiscal year 1938? A. That is true.

Q. Now, that figure that you have last given me, how much of that represents income from toll calls to points outside the state of California?

A. \$177.13.

Q. Could you tell me what percentage that is of the total income from toll calls?

A. Of the total?

Q. Total income from toll calls.

Mr. Clark: Let's have them both, if we can, and I won't have to go into it on cross, that is, the percentage that the out-of-state calls are to the total income of toll calls.

The Witness: I think it is about 3-1/3 percent. [1994]

Trial Examiner Lindsay: Just a minute, now.

Mr. Clark: I will keep still.

Trial Examiner Lindsay: When both of you are asking questions at the same time, you get the reporters confused and also get me confused and the witness.

Now, proceed with the examination, and you make the objections when you feel they are necessary, Mr. Clark, and you will have the opportunity of cross examination.

(Testimony of C. H. Glenn.)

Mr. Clark: Yes, indeed.

Q. (By Mr. McTernan) Now, that figure you have just given me, 3-1/3 percent, Mr. Glenn——

Trial Examiner Lindsay (Interrupting): Just a minute, please.

Read back the question. First the question that Mr. McTernan put and then the question that Mr. Clark put, and then the answer.

(The record referred to was read by the reporter, as set forth above.)

Trial Examiner Lindsay: I don't know if that answer was in response to Mr. McTernan's question or Mr. Clark's question.

Mr. McTernan, will you please straighten that out?

Mr. McTernan: Yes, I will. I was just about to.

Q. That last percent you have given, Mr. Glenn, is that the percentage of out-of-state toll calls—pardon me. [1995] Withdraw that.

Will you *please what* that 3-1/3 percent is?

A. That 3-1/3 percent is the percentage of out-of-state calls.

Q. Income from out-of-state calls, or out-of-state calls?

A. Income from out-of-state calls; not number of calls, but amounts, the amount we are talking about.

Q. That 3-1/3 percent is of what amount?

A. 3-1/3 per cent of the total amount of tolls collected.

(Testimony of C. H. Glenn.)

Q. And that is what? A. About 3-1/3.

Q. No. I mean, what is that figure?

A. The out-of-state calls?

Q. The total toll calls. A. \$5248.48.

Mr. McTernan: Does that clear it up for you, Mr. Examiner?

Trial Examiner Lindsay: I will ask one question. [1996]

Q. However, of the \$5248.48, three and one third percent of that figure is the total income from calls from outside of the State of California, is that right? A. That is correct.

Q. (By Mr. McTernan) Mr. Glenn, could you give me the total number of toll calls which the Exchange—which went through the Exchange—for the fiscal year 1938? A. 35,558.

Q. And of those, how many were calls outside of the State of California? A. 77.

Q. Mr. Glenn, of those 77 calls which were made to points outside of the State of California, could you tell me, give me some indication of the points to which those calls were made, by city or State?

A. Well, it would be pretty hard. There were several calls into Texas, into Arizona, Mexico—Arizona, New Mexico, Nevada. I think they were scattered quite generally across the country.

Q. Quite generally throughout the country?

A. Yes, sir.

Trial Examiner Lindsay: I don't believe I ruled on your motion or your objection. However, I be-

(Testimony of C. H. Glenn.)

lieve it was stipulated by Mr. McTernan that your objection goes to all of the testimony. [1997]

Mr. Clark: Yes, I think it was, Mr. Examiner.

Q. (By Mr. McTernan) I believe you testified, Mr. Glenn, that the lines of the Pacific Telephone and Telegraph Company come into your board here in Corcoran? A. That is correct.

Q. Now, what sort of an arrangement do you have with them in case of calls going outside of Corcoran?

A. We have what they call an independent telephone connection agreement with the Pacific Telephone and Telegraph Company.

Q. Well, could you go into more detail and tell us how that operates?

A. We get 30 per cent, and they get 70 per cent of the outgoing calls.

Q. How about the incoming calls?

A. We don't get anything on them.

Q. You don't get anything on them?

A. On the incoming calls.

Q. How is this 30-70 per cent financial arrangement settled up? A. They bill us——

Mr. Clark (Interrupting): May I have that question, Mr. Examiner?

Trial Examiner Lindsay: Yes.

(The record referred to was read by the reporter, as set forth above.) [1998]

Mr. Clark: I have no comment to make.

The Witness: They bill us each month for 70 per cent of the amount.

(Testimony of C. H. Glenn.)

Q. (By Mr. McTernan) Of the amount that you collect?

A. Of the whole amount, yes, sir. You see, these bills, if I might just clear up one thing, we make out no bills. Those bills are made out in Sacramento by the Pacific people and are collected in Hanford out of our office. The bills are sent from Hanford into Sacramento to their clearing house of the Pacific Telephone and Telegraph, and they in turn send these bills to us for collection. Then they bill us for the amount—at the same time they bill us for the amount, their proportion or 70 percent of the money that we collect on those bills.

Mr. Clark: May I ask, Mr. Examiner, whether this applies to the out-of-state calls?

The Witness: It applies to all the toll calls.

Mr. Clark: I see.

The Witness: Hanford is our central office of this district.

Q. (By Mr. McTernan) Do you have any agreements, or any working agreements, Mr. Glenn, with the Western Union Company?

A. No, sir.

Q. Do you serve them in any way at all?

A. No, sir. [1999]

Q. Well, suppose I telephone—I wanted to send a telegram and I phoned it into the telephone office, how would that be taken care of?

A. We wouldn't take it there. They would take it over at the Santa Fe. [2000]

(Testimony of C. H. Glenn.)

Q. Do you ever send out messages, telegraph messages, that are received here in Corcoran by the Western Union over your wire?

A. I don't think so. You mean relay them?

Q. Yes. A. No.

Q. In other words, deliver the message over the phone?

A. Well, if the agent at the Santa Fe who handles the messages there would telephone, would ask for a number, why it would go through our exchange.

Mr. Clark: I don't think that is responsive, Mr. Examiner. I will ask that it go out. I think Mr. McTernan is asking whether the Corcoran Telephone Exchange undertakes the duties of relaying the message.

Isn't that true, Mr. McTernan?

Mr. McTernan: Well, I will straighten that out.

The Witness: No, we don't take any responsibility in delivering.

Q. (By Mr. McTernan) I will ask you——

Trial Examiner Lindsay (Interrupting): The other answer may go out.

Q. (By Mr. McTernan) I will ask you, Mr. Glenn, if the agent of the Western Union Telegraph Company uses your lines to deliver messages? A. I don't know. [2001]

Mr. Clark: I object to that.

The Witness: I don't know whether they do or not.

(Testimony of C. H. Glenn.)

Q. (By Mr. McTernan) Is the Western Union Company a subscriber to your telephone exchange?

A. Yes, sir.

Q. Is the Atchison, Topeka and Santa Fe Railroad a subscriber? A. Yes, sir.

Mr. Clark: Objected to as incompetent, irrelevant and immaterial.

Trial Examiner Lindsay: The answer is already in. Don't answer quite so fast, Mr. Glenn.

The Witness: Pardon me.

Trial Examiner Lindsay: Do you want a motion to strike?

Mr. Clark: I would like to strike both of these answers upon the ground they are incompetent, irrelevant and immaterial upon the theory, Mr. Examiner, it makes no difference who the subscribers are so far as establishing whether or not this respondent is engaged in interstate commerce. In other words, I could be engaged in interstate commerce and have an office here in Kings County and subscribe to this telephone exchange and that wouldn't make the telephone exchange participating my business or interstate commerce.

Mr. McTernan: If I might speak, Mr. Examiner, I think it has a very close relation to the effect on interstate com- [2002] merce in view of the subscription to the telephone exchange.

Mr. Clark: I will submit it.

Trial Examiner Lindsay: Those answers may stand. You may have an exception.

(Testimony of C. H. Glenn.)

Q. (By Mr. McTernan) I believe you testified, Mr. Glenn, that you are also a farmer?

A. Yes, sir.

Q. How large is your farm? How large are your farming operations?

A. About 5200 acres.

Q. What are your crops?

A. Principally grain and cotton.

Q. Do you have your cotton ginned by the J. G. Boswell Company?

A. Yes, sir.

Q. Do you have any cotton stored with the J. G. Boswell Company at the present time?

A. No, sir.

Q. Have you had any in the past six months?

A. No, sir.

Q. Do you have any financial arrangements with the J. G. Boswell Company?

A. Yes, sir.

Q. Explain the nature of those arrangements.

A. In the early part of the year, before we begin cropping, [2003] we make our budgets for our grain and our cotton and submit those to the J. G. Boswell Company and make arrangements with them to finance those crops according to these budgets.

Q. Are you at present indebted to the J. G. Boswell Company, Mr. Glenn?

A. At present what?

Q. Indebted to the Boswell Company.

A. Yes, sir.

Q. In what amount?

Mr. Clark: I object to that upon the ground it

(Testimony of C. H. Glenn.)

is incompetent, irrelevant and immaterial. The question is incompetent, irrelevant and immaterial anyway, Mr. Examiner, I submit, unless directed to the times specified in the complaint in this matter.

Trial Examiner Lindsay: Yes. Specify——

Mr. Clark (Interrupting): Not the present situation.

Trial Examiner Lindsay: Yes. Specify the times. Then he may answer.

Q. (By Mr. McTernan) Were you indebted to the Boswell Company during February or March of 1939?

Mr. Clark: I will object to that on the ground it is incompetent, irrelevant and immaterial and proves no issue in the alleged case against the Corcoran Telephone Exchange and also I would like to add to that objection, Mr. Examiner, that it is not established in this record, nor does it appear, [2004] that the Corcoran Telephone Exchange or Mr. Glenn is subject to the jurisdiction or authority of the Board, no grounds of Federal jurisdiction having been established.

Trial Examiner Lindsay: He may answer.

The Witness: I will have to have that question again.

Trial Examiner Lindsay: Read the question.

(The record referred to was read by the reporter, as set forth above.)

The Witness: Yes, sir.

Q. (By Mr. McTernan) And in what amount?

Mr. Clark: I will object to that upon the ground

(Testimony of C. H. Glenn.)

it is incompetent, irrelevant and immaterial, something that absolutely is within the privacy of Mr. Glenn, if he has any objection to answering it.

Trial Examiner Lindsay: Do you have any objection to answering?

The Witness: No, I have no objection. I couldn't tell you.

Mr. Clark: Very well. Then I will withdraw that objection.

The Witness: Without getting the data, I couldn't answer that question.

Q. (By Mr. McTernan) Could you give me any approximation, Mr. Glenn?

A. Oh, probably around—somewhere in the neighborhood of [2005] \$25,000 or \$30,000, probably. That is about what it takes to run our affairs.

Q. (By Mr. McTernan) In those financial arrangements which you have just described, Mr. Glenn, do they give you the money in a lump sum or do they pay it to you as your crop matures and as your expenses mount up, or do they—strike that last.

Trial Examiner Lindsay: I would like to have the question read back.

(The record referred to was read by the reporter, as set forth above.)

Mr. Clark: Is that the question, Mr. Examiner?

Trial Examiner Lindsay: Yes.

Mr. Clark: I will object on the ground it is in-

(Testimony of C. H. Glenn.)

competent, irrelevant and immaterial. I submit, Mr. Examiner, that if the matter of Mr. Glenn being indebted to Boswell is in any material, that that is the long and short of it. That is the end of the story, not the manner in which the money is advanced.

Trial Examiner Lindsay: Well, he may answer.

The Witness: We draw it as we need it. [2006]

Q. (By Mr. McTernan) Is that paid directly to you, or is that paid to your creditors?

A. Paid to me, partially.

Q. Partially?

A. May I go back and just clear one thing?

Q. Surely.

Trial Examiner Lindsay: Yes.

The Witness: Part of those things are sent direct to the Company, and part of them, the bills, I mean, and I O.K. them at the office, and after I O. K. them, they pay them. That is our method of dispensing it.

Q. (By Mr. McTernan) Well, how do you work payrolls for your farm labor?

Mr. Clark: Objected to upon the ground it is incompetent, irrelevant and immaterial, Mr. Examiner. This is going awfully far afield, I submit. I think the case against the Telephone Exchange, the Corcoran Telephone Exchange, Mr. Examiner, has something to do with a Mrs. Dunn who allegedly was discharged by Mr. Glenn, according to the complaint—this being the complaint of the Board—for so-called Union activities, and I sub-

(Testimony of C. H. Glenn.)

mit that the manner in which Mr. Glenn handles his farm payroll has nothing whatsoever to do with any such claim as that, or with the allegations which appear in the complaint.

Trial Examiner Lindsay: He may answer that question. You may have an exception. [2007]

The Witness: May I hear the question again?

Trial Examiner Lindsay: Yes. Read the question, please.

(The question referred to was read by the reporter, as set forth above.)

The Witness: The foreman turns the time into me. I figure it up, and turn it into the gin.

Q. (By Mr. McTernan) And does the gin issue the check to the workman?

A. They issue a check as a whole to me, and I distribute the money.

Q. Mr. Glenn, are you a member of the Associated Farmers—

A. (Interrupting): Yes.

Q. (Continuing) —of Kings County, California?

When did you join, approximately?

A. Oh, during the past year. I don't remember when it was.

Q. Well, with reference to January 1st, 1939, was it before or after?

A. It was before that.

Mr. McTernan: You may inquire.

Cross Examination

Q. (By Mr. Clark) Mr. Glenn, may I see that

(Testimony of C. H. Glenn.)

memorandum that you testified from on your direct examination? You hold it, please.

Now, I think you said on your direct examination, in response to Mr. McTernan's question, that the Corcoran Telephone [2008] Exchange maintains a total of 139.9 miles of wire and cable in the County—and cable, is that right? A. Yes, sir.

Q. Will you please state where that cable and wire is located?

A. Located within the city limits of Corcoran.

Q. Very well.

Now, you also told us that operative revenue of the Corcoran Telephone Exchange for the fiscal year 1938, after the payment of taxes, amounted to \$14,960.04, is that right?

A. That is correct.

Q. Will you please tell us from what source that amount, that gross income came, that is, from what payments or in what form?

A. It is payments for toll calls and the payment of the exchanges which are the stations that are in the businesses or the homes.

Q. All right.

Now, I believe you gave us the total number of toll calls, that is, the total income from toll calls——

A. (Interrupting): \$5,248.00——

Q. (Continuing) ——as amounting to \$5,248.48, is that right? A. That is correct.

Q. Now, am I correct in stating that the balance of the \$14,960.04, which constituted the gross income of the Corcoran Telephone Exchange for the

(Testimony of C. H. Glenn.)

fiscal year 1938, came from sub- [2009] scriptions to telephone service by residents of Corcoran and vicinity?

A. From rentals.

Q. From rentals? A. Yes, sir.

Q. That is, rentals of the telephone, is that right? A. That is right.

Q. In other words, is that what we all look upon as being our telephone bill, individually?

A. That is it.

Q. Are those paid monthly to you by persons who have telephones in their houses here in Corcoran? A. Yes, sir.

Q. All right.

Now, will you please state whether any of that amount, that is the difference between the total income from toll calls, to-wit, \$5,248.48, and the \$14,960.04, you see——

A. (Interrupting): Yes, sir.

Q. (Continuing) ——came from any source outside the County of Kings?

A. No, sir, it did not.

Q. All right.

Now, will you please give us, Mr. Glenn, if you have it available, the percentage—withdraw that.

Now, on your direct examination, I believe you told us that [2010] the Corcoran Telephone Exchange, during the fiscal year 1938, had received a total amount of \$177.13 by way of revenue from out-of-state calls, is that right?

A. That is correct.

(Testimony of C. H. Glenn.)

Q. Am I correct in stating that that figure of \$177.13 is part of the \$5,248.48 figure you gave us as being the total amount received for all toll calls?

A. Yes, sir.

Q. All right.

Now, if you have worked it out, can you give us the percentage which the \$177.13, being the total revenue received during the fiscal year 1938 from all outside of state calls, bears to the total revenue of the Corcoran Telephone Exchange after the payment of taxes?

A. Yes, sir.

Q. State what it is?

A. One and eighteen-one hundredths percent.

Q. In other words, is that percentage—in other words, that percentage is one and eighteen-one hundredths per cent of the total revenue received by the Corcoran Telephone Exchange during the year 1938?

A. That is correct.

Q. All right.

Now, I believe you gave us the total number of calls handled by the Corcoran Telephone Exchange during the fiscal [2011] year 1938 as 35,558, is that right?

A. That is correct.

Q. And I think you also said that the total number of out-of-state calls was 77?

A. That is correct.

Q. Have you computed the percentage which the total number of out-of-state calls during the fiscal year 1938 bears to the total number of calls handled by the Exchange?

A. Yes, sir.

(Testimony of C. H. Glenn.)

Q. State what it is, please?

A. Two and sixteen one-thousandths of one per cent.

Q. All right.

In other words, am I correct in stating that would be .00216 per cent? *

A. That is the way I figure it.

Q. Yes.

Mr. McTernan: Mr. Clark, I think that you have that percentage wrong. [2012]

Mr. Clark: Well, what percentage are you referring to?

Mr. McTernan: That 216 percent.

Mr. Clark: That is a mathematical——

Trial Examiner Lindsay (Interrupting): Let us not argue about that.

Mr. Clark: I submit, Mr. Examiner, it is 77 calls out of 35,558, and we can figure it out if we are wrong.

Q. Now, with respect to the total revenue, Mr. Glenn, which the Corcoran Telephone Exchange received during the fiscal year 1938 from out-of-state calls, and which I think you said was 177.13, will you please tell us whether or not that is the 30 per cent received by you, or is that the total amount of tolls charged for the calls?

A. That is the total amount of the tolls.

Q. The total amount of the tolls?

A. Yes.

Q. Then am I correct in stating that the Cor-

(Testimony of C. H. Glenn.)

coran Telephone Exchange actually received 30 per cent of that item? A. That is correct.

Q. In other words, the amount you really received and the amount which is really part of your gross income for the fiscal year 1938 is 30 per cent of \$177.13?

A. That is correct.

Mr. Clark: I wonder if we could compute that.

Trial Examiner Lindsay: It isn't necessary. I will [2013] do that.

Q. (By Mr. Clark) You haven't figured out the percentage which that is, of course, is that right?

A. No, sir, I have not.

Q. Well, am I correct in stating then that of the \$177.13 which you have testified as received for out-of-state calls during the fiscal year 1938, 70 per cent of that amount was turned over to the P. G. & E.—the Pacific Telephone and Telegraph?

A. That is correct.

Q. Can you tell us, Mr. Glenn, of what physical equipment outside of the wires and cables—and I want this just generally—the Corcoran Telephone Exchange consists? A. Pole lines.

Q. How about the office in Corcoran? What is there there?

A. A switchboard.

Q. And where is it that the line of the Pacific Telephone and Telegraph Company plugs into your system?

A. They come right to the switchboard in the main office.

(Testimony of C. H. Glenn.)

Q. All right.

Am I correct in stating that except for that, the entire system of the Corcoran Telephone Exchange is confined within Kings County?

A. That is true.

Q. All right. [2014]

Trial Examiner Lindsay: Any other questions?

Mr. Clark: I am not finished.

Trial Examiner Lindsay: I am sorry.

Q. (By Mr. Clark) Mr. Glenn, in addition to the 35,558 calls which I directed your attention to a few moments ago, were there any further calls handled by the Exchange during the fiscal year 1938?

I will withdraw that question and reframe it, Mr. Examiner.

Am I correct in stating, Mr. Glenn, that the 35,558 calls that I directed your attention to a few moments ago were only toll calls?

A. That is correct.

Q. Have you any idea of how many other local calls were handled by the Corcoran Telephone Exchange during the year 1938?

A. I have no idea.

Q. You don't keep track of those?

A. We have no track of those.

Q. Is that right? A. Yes.

Q. In other words, you are not giving us any estimate of the number of calls put in by your subscribers? A. No, sir.

(Testimony of C. H. Glenn.)

Q. Do you pay the P. G. & E.—rather the Pacific Telephone [2015] and Telegraph Company any payment for their plugging into your system here? Do you make any payment to them for that?

A. No.

Q. Am I correct in stating that all you get out of it is 30 percent of the outgoing calls?

A. That is correct.

Q. Or, in other words, 30 percent of that \$177 figure for the year 1938?

A. No, not our \$177. It may amount to—we got 30 percent of all the toll calls.

Q. Oh, I see.

30 percent of the entire amount?

A. That is the outbound calls.

Q. That would 30 percent of the \$5,248.48, if that was the total amount of the toll calls?

A. Yes.

Q. That is true, isn't it? A. Yes.

Q. All right.

And you received no payment whatsoever on incoming calls? A. No, sir.

Mr. Clark: That is all, Mr. Examiner.

Redirect Examination

Q. (By Mr. McTernan) Mr. Glenn, how many wires of the Pacific Telephone and Telegraph plug into your board? [2016]

A. There are either six or seven. I think there are seven now.

Q. If a call comes into the Corcoran Telephone

(Testimony of C. H. Glenn.)

Exchange from a point outside of Corcoran, collect, you get 30 percent of the toll on that call, do you not? A. No, sir.

Q. Don't you get anything for calls coming in collect?

A. No—pardon me. We do. We get 30 percent where we collect the money, yes.

Q. Isn't it a fact that J. G. Boswell Company sends in many calls collect from various other offices?

Mr. Clark: May I have that question read back?

Trial Examiner Lindsay: Yes.

(The record referred to was read by the reporter, as set forth above.)

Mr. Clark: I object to that on the ground it is incompetent, irrelevant and immaterial. J. G. Boswell Company is one subscriber out of a great many.

Trial Examiner Lindsay: He may answer the question.

The Witness: Yes, sir.

Q. (By Mr. McTernan) Isn't it a fact that the J. G. Boswell Company is your largest subscriber?

A. Yes, sir.

Q. Have you installed any new equipment in your telephone system in the past year? [2017]

A. Yes, sir.

Q. Would you tell us what that new equipment was?

A. Installation of cable to replace some old and additions.

(Testimony of C. H. Glenn.)

Q. Could you give us how much that material cost to buy, the actual material?

A. I would say about \$3500.

Q. Now, where did you purchase such material, Mr. Glenn?

A. The Graybar Electric Company of San Francisco.

Q. From where was that material shipped?

Mr. Clark: Objected to on the ground it is incompetent, irrelevant and immaterial, from where material was shipped to put in some lines, Mr. Examiner.

Trial Examiner Lindsay: It may be very material. He may answer.

The Witness: It was shipped from near Chicago. I don't remember the name of the town. [2018]

Q. (By Mr. McTernan) You know it was shipped from some point near Chicago? Some point in Illinois? A. Yes.

Mr. McTernan: You may inquire.

Recross Examination

Q. (By Mr. Clark) Mr. Glenn, where did you place the order for this material?

A. In San Francisco.

Q. And what was the name of the Company again?

A. Graybar Electric Company.

Q. Did you have any communication whatsoever with anyone outside of the State of California with respect to that material?

(Testimony of C. H. Glenn.)

A. No, sir.

Q. How many subscribers has the Corcoran Telephone Exchange? A. Just about 300.

Mr. Clark: Yes.

That is all.

Mr. McTernan. That is all.

Q. (By Trial Examiner Lindsay) Where do you buy your wire?

A. The Graybar Electric, and some from the Kellogg Switchboard & Supply Company of Los Angeles.

Mr. Clark: Mr. Examiner, may we have the Graybar Company located in connection with this question?

Trial Examiner Lindsay: San Francisco, and the second one [2019] in Los Angeles.

Q. Which is which?

A. The Graybar Electric Company is on Sansome Street in San Francisco, and the Kellogg Switchboard & Supply Company is in the San Fernando Building in Los Angeles.

Q. Now, in order to make a connection on a long distance telephone call to a point outside of the State of California, is it necessary that you plug into any other telephone company?

A. Yes, sir.

Q. And who do you plug in with?

A. We call Hanford.

Q. You call Hanford? A. Yes.

Q. And in turn, Hanford must plug in with

(Testimony of C. H. Glenn.)

what other company?

A. They have their own company.

Q. What company is at Hanford?

A. Pacific Telephone and Telegraph Company.

Q. And do you pay for plugging in with that particular company?

A. Well, no. That is where we get 30 per cent of the outgoing calls from them.

Q. In order to make that call and continue it through and complete it, it must go through some other telephone company to its destination?

A. Yes, that is true. You mean, besides the Pacific?

Q. Through the Pacific? [2020]

A. Yes, we go direct to the Pacific.

Q. And the Pacific, of course, connects up with other telephone exchanges, does it not?

A. Well, I suppose—that is something I have no knowledge of, of course. It depends upon whether they have their own lines to the destination.

Q. And without that connection, you could not make your long distance telephone calls?

A. No, that is correct.

Q. Where do you buy your telephone poles?

A. We buy them principally from the San Joaquin Light & Power Company.

Q. What do you mean by “principally?”

A. We have bought some from the Graybar. They handle all electrical equipment; because of

(Testimony of C. H. Glenn.)

the convenience, I sometimes buy them at the yard of the San Joaquin.

Q. Now, is there any material that you have over there, equipment of any type, that you buy from points outside of the State of California?

A. No, sir.

Q. How about your switchboards?

A. How much are they?

Q. How about your switchboards?

A. I get those from the Graybar.

Q. The Graybar does not manufacture any of these articles, [2021] is that right?

A. I think they do. I think they manufacture their own switchboards. They are marked so, aren't they?

Mr. Clark: What was the last?

The Witness: They are so marked.

Trial Examiner Lindsay: Do they manufacture wire, wire that you use?

The Witness: I couldn't tell you that, but I suppose they do.

Trial Examiner Lindsay: That is all.

Mr. Clark: Mr. Glenn, the type of telephone call that you described to Mr. Lindsay just now is the type upon which the Corcoran Telephone Exchange receives 30 per cent and the Pacific Telephone and Telegraph Company receives 70 per cent, isn't that right?

The Witness: That is right.

Mr. Clark: Now, is there any connection at all

(Testimony of C. H. Glenn.)

between your Company, the Corcoran Telephone Exchange, and the Pacific Telephone and Telegraph Company other than the plugging in which you have described, and which takes place here in Corcoran?

The Witness: None whatever.

Trial Examiner Lindsay: Is that all?

Mr. Clark: That is all from us.

Mr. McTernan: That is all from us. [2022]

(Witness excused.)

Mr. McTernan: Could we have a ten-minute recess, Mr. Examiner?

Trial Examiner Lindsay: Yes, a ten-minute recess.

(At this point a short recess was taken, after which proceedings were resumed, as follows:)

Trial Examiner Lindsay: Hearing called to order.

Mr. McTernan: Mrs. Dunn.

MARGARET A. DUNN

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. McTernan) Will you state your name, please? A. Margaret A. Dunn.

(Testimony of Margaret A. Dunn.)

Q. Your address?

A. 1310 Jepson Avenue.

Q. In Corcoran? A. In Corcoran.

Q. Are you here under subpoena, Mrs. Dunn?

A. Yes, I am.

Q. Have you ever worked for the Corcoran Telephone Exchange? A. I have.

Q. When were you first employed by the Exchange?

A. August 23rd, 1924. [2023]

Q. And how long did that employment last?

Mr. Clark: May I have that question, please?

Trial Examiner Lindsay: Yes. Read the question.

(The question referred to was read by the reporter, as set forth above.)

The Witness: Until March 1, 1939.

Trial Examiner Lindsay: May I have the last answer?

(The answer referred to was read by the reporter, as set forth above.)

Q. (By Mr. McTernan) Mrs. Dunn, on or about the 15th of February, will you tell me whether or not you had a conversation with Mr. Galusha?

A. Yes, I did.

Q. Where was that conversation held?

A. At his residence.

Q. Who is Mr. Galusha?

A. Manager of the San Joaquin Ginning Company.

(Testimony of Margaret A. Dunn.)

Q. Was anyone else present when this conversation took place?

A. His wife and nephew.

Q. Could you tell us what you said to him and what he said to you?

Mr. Clark: Objected to, Mr. Examiner, on the ground it is hearsay and not binding on any of the respondents in this proceeding, and so far as the respondent, the Associated [2024] Farmers of Kings County, Inc., is concerned, that there is no connection at all shown between that respondent and any of the persons present at the conversation.

Trial Examiner Lindsay: She may answer.

The Witness: What was the question?

Trial Examiner Lindsay: Read the question.

(The question referred to was read by the reporter, as set forth above.)

The Witness: I told him that I understood that a petition had been circulated to get Mr. Glenn to relieve me in my work at the Corcoran Telephone Exchange, and asked him if he knew anything about it.

He said he hadn't heard anything about it, but on request of his wife asked him to *do* down and ask Mr. Boyett if he knew anything about it.

Q. (By Mr. McTernan) Was anything else said at that time?

Mr. Clark: The same objection, and may it be deemed to run to this entire conversation?

(Testimony of Margaret A. Dunn.)

Mr. McTernan: So stipulated.

Trial Examiner Lindsay: She may answer.

The Witness: No, sir.

Q. (By Mr. McTernan) Did you see Mr. Galusha that day again? A. Yes.

Q. When was that?

A. An hour later. [2025]

Q. Where did you see him?

A. At his residence.

Q. Was anyone else present?

A. His wife.

Q. Will you tell us what was said during that conversation?

A. He told me that Mr. Boyett told him that he knew that a petition had been circulated——

Mr. Clark (Interrupting): Just a minute. The same objection, Mr. Examiner, on the ground it is hearsay and not binding on any of the respondents in this proceeding; also incompetent, irrelevant and immaterial.

Trial Examiner Lindsay: She may answer.

Read the question.

(The question referred to was read by the reporter, as set forth above.)

The Witness: He said that Mr. Boyett said that he knew that a petition had been circulated because my two daughters had been seen talking with the pickets down at the Boswell gin and a conversation had been repeated and they were blaming me for it, that I was delivering the messages

(Testimony of Margaret A. Dunn.)

to the girls and they were taking them to the pickets.

Q. (By Mr. McTernan) Was anything further said at that time?

A. Not with Galusha. [2026]

Q. Now, did you speak to Mr. Glenn about this matter? A. The next day.

Mr. Clark: May I have the time fixed, Mr. Examiner?

Trial Examiner Lindsay: Yes.

Mr. McTernan: I was going to fix that.

Q. Where did you speak to Mr. Glenn?

A. At his house.

Q. What time of the day?

A. About 2:00 o'clock in the afternoon.

Q. Was anyone else present?

A. No, sir.

Q. Will you tell us what you said to Mr. Glenn and what Mr. Glenn said to you on this occasion.

Mr. Clark: Objected to on the ground it is hearsay as to the respondents Associated Farmers of Kings County and the respondent Boswell and Company.

Trial Examiner Lindsay: She may answer.

Read the question, please.

(The question referred to was read by the reporter, as set forth above.)

The Witness: I asked Mr. Glenn if he had heard about this petition. And he answered me and told me that he had been approached by a group of

(Testimony of Margaret A. Dunn.)

men about having me discharged from my work on account of leakage on the board and about the girls being seen associating with the union men. [2027]

And we discussed it in—well, I told him that Mr. Boyett had said—he told me about it and we went at quite length to talk over the situation. And he told me that inasmuch as—he told me inasmuch as I had worked for 15 years and my work had been satisfactory and he relied on me in every way, he informed them that he would not discharge me unless they brought actual facts of the case, and that he believed in me thoroughly and my work had been satisfactory and he was going to stand by me.

He said he knew they couldn't prove anything on me. And I told him the story about the girls, just how the girls happened to be seen talking to Mr. Prior.

And he said he believed the story and that he would stand by me, and he shook my hand and patted me on the back and told me not to pay any attention to it at all. [2028]

Q. (By Mr. McTernan) During this conversation, was there anything said about the labor trouble at the Boswell Company?

Mr. Clark: Same objection.

Trial Examiner Lindsay: Same ruling. She may answer.

The Witness: We talked it over. He told me about the labor trouble.

(Testimony of Margaret A. Dunn.)

Q. (By Mr. McTernan) What was said about it in general?

Mr. Clark: Is this the conversation between Mr. Glenn and this lady?

Trial Examiner Lindsay: Yes.

Mr. Clark: On February 16th, is that correct?

Mr. McTernan: Yes.

The Witness: Well, he just told me that, what everybody else knew in town, that there had been a disturbance, and that the men were just all worked up over the situation; and that any little thing that would take place just might cause an awful lot of disturbance in town.

Q. (By Mr. McTernan) Did you have any further conversation with Mr. Glenn after this time?

A. On Saturday morning of that same week.

Q. Where did this conversation take place?

A. At my home.

Q. Was anyone else present?

A. No, sir, that is, not in the room.

Q. No one in the room. [2029]

What time of day did you say it was?

A. Around about 8:00 o'clock.

Q. You said Mr. Glenn came to your house?

A. I called him to my house.

Q. You called him to your house.

Will you tell us what conversation took place at that meeting?

Mr. Clark: Objected to on the ground it is hearsay as to the Respondents, the Associated Farmers

(Testimony of Margaret A. Dunn.)

of Kings County and the J. G. Boswell Company.

Trial Examiner Lindsay: She may answer. Do you remember the question? Do you want it read?

The Witness: I remember the question.

I told him of a conversation that had been repeated to me by Mr. Galusha concerning this affair.

Q. (By Mr. McTernan) Well, tell us just what you said.

A. I told him that Mr. Galusha told me——

Mr. Clark (Interrupting): The same objection to this, and may the objection be deemed to run to this entire conversation? This is a different conversation that is alleged to have taken place between the witness and Mr. Glenn, and so my objection at this point runs only on behalf of the other Respondents, the Associated Farmers of Kings County and Boswell. That is why I have repeated them.

Trial Examiner Lindsay: Will you kindly read back the [2030] question and the answer thus far?

(The record referred to was read by the reporter, as set forth above.)

Trial Examiner Lindsay: How do you spell Galusha?

Mr. McTernan: G-a-l-u-s-h-a.

Q. Is that the correct spelling of Mr. Galusha's name, Mrs. Dunn? A. I believe so.

Trial Examiner Lindsay: You may proceed.

The Witness: He said he had talked to Forrest Riley about this affair, and Forrest Riley——

(Testimony of Margaret A. Dunn.)

Mr. Clark (Interrupting): May I ask who this is saying this?

Trial Examiner Lindsay: Mr. Galusha. Is that it?

The Witness: I am telling Mr. Glenn of a conversation that Mr. Galusha told me he had had with Forrest Riley.

Mr. Clark: All right.

Trial Examiner Lindsay: All right. Proceed.

The Witness: Forrest Riley told him that he knew that——

Mr. Clark (Interrupting): Just a minute. I ask that it go out as not responsive, Mr. Examiner, because now this purports to be a positive statement by this witness as to what Forrest Riley told Mr. Galusha. Let's have it in the form of the conversation between the witness and Mr. Glenn. That is all I want to be sure of. [2031]

Trial Examiner Lindsay: Well, will you kindly let this lady answer the question? I have ruled that she may answer, and if there is any other point of objection that you have that you think you haven't covered, Mr. Clark, you may have the whole of your objection read back to you. If there is anything you want to add to it, you may add it, but each instance when the lady starts to talk there is an interruption there. We cannot get anywhere that way.

Do you want your objection read back to you, Mr. Clark?

Mr. Clark: No, it is all in there.

(Testimony of Margaret A. Dunn.)

Trial Examiner Lindsay: It is all in there.

Let's proceed.

Mr. Clark: Except that I can't anticipate that her answer is going to be non-responsive to the question. That is why I am breaking in.

Trial Examiner Lindsay: Will you kindly read back the question and the answer thus far?

(The record referred to was read by the reporter, as set forth above.) [2032]

Trial Examiner Lindsay: All right. Now proceed.

The Witness: He said that Forrest Riley had *knew* about this meeting with these men and that Bill Boswell told him that he would get my job if it was the last thing he did; that he was going to put detectives and a dictaphone in my home and have the girls watched to prove their point. He said he had no objection to my work or anything about me, but they were not going to tolerate having any of us associating with the pickets.

Q. (By Mr. McTernan) What did Mr. Glenn say to that?

A. I don't remember that there was anything particular said, only we just talked over the situation again. He did remark and ask me about the girls, if that was so, if the girls were going out with any of the men.

Q. Was that so? A. What.

Q. Is that so? A. No.

Q. Did you so tell Mr. Glenn? A. Yes.

(Testimony of Margaret A. Dunn.)

Q. What was the next time that you spoke to Mr. Glenn about this matter?

A. On March 1st.

Q. Where did this conversation take place?

A. In his office. [2033]

Q. At what time of day?

A. About—between—about 9:15, I believe; between 9:00 and 9:30 in the morning.

Q. And was anyone else present?

A. No, there wasn't.

Q. Will you tell us what you said to him and what he said to you?

Mr. Clark: Same objection as to the respondents other than the Telephone Exchange.

Trial Examiner Lindsay: She may answer.

The Witness: He asked for my resignation and I refused to and asked him why he wanted it. He said that pressure was being brought to bear too heavily on him he would have to ask me to resign, that he just couldn't stand what was being said. He said they were certainly awful. I asked him what was so awful about it and he wouldn't answer it. He said he couldn't tell me.

I said, "Well, is there anything personal?"

He said, "Absolutely not."

I said, "Anything about my work?"

He said, "Absolutely not."

Then I tried to make him tell me what it was. After awhile he said, "Isn't it true that your daughter Margaret is keeping company with Mr.

(Testimony of Margaret A. Dunn.)

Prior?"

Q. What did you say?

A. I said, "Absolutely not." I told him the story again. [2034] I said, "You told me," and I said, "You know she doesn't."

He also asked me if Dorothy had ever belonged to any secret organizations in school. I replied, "No."

Q. Well, what was the result of this conversation? Did you hand in your resignation?

A. No, I did not.

Q. Did you go back to work?

A. I went back to work that morning.

Q. And did you have any further conversation with Mr. Glenn about this matter?

A. The next morning when—it wasn't a conversation. He just——

Q. (Interrupting) Well, what happened the next morning?

A. At 7:00 o'clock he called me on the phone and told me not to report to work.

Mr. Clark: Same objection to that as to these other respondents.

Q. (By Mr. McTernan) Did he give you any reason?

Trial Examiner Lindsay: Just a moment.

Mr. Clark: I move to strike the question upon the ground of the objection previously stated—strike the answer, I mean.

Trial Examiner Lindsay: The answer may stand.

(Testimony of Margaret A. Dunn.)

Q. (By Mr. McTernan) Did he give you any reason for telling you not to come to work? [2035]

A. He give me that excuse that morning, I was getting too old for the work and I was sick and he just thought I better stay home.

Q. Had you been sick, Mrs. Dunn?

A. Not at that time.

Q. Now, subsequent to that time will you tell me whether or not you had a conversation with Mr. Forrest Riley? A. Yes, I did.

Q. When was that conversation held?

A. Somewhere between—in that week that I was told about the petition. I don't remember the exact day.

Q. No, Mrs. Dunn. I said subsequent to the last conversation which you have just testified to as having with Mr. Glenn, did you have a conversation with Mr. Forrest Riley. A. Yes, sir.

Q. When was that?

A. That was during the week before I was dismissed. He walked into the Exchange and I asked him——

Q. (Interrupting): No.

Trial Examiner Lindsay: Just a minute. Subsequent means after.

The Witness: Oh.

Q. (By Mr. McTernan) I said subsequent to the date that you were discharged by Mr. Glenn over the telephone, after that time. I think you

(Testimony of Margaret A. Dunn.)

testified that was on or about March [2036] 2nd, 1939.

A. Will you state your question again, please?

Trial Examiner Lindsay: Read the question, Mr. Reporter.

Mr. McTernan: I will reframe the question.

Trial Examiner Lindsay: All right.

Q. (By Mr. McTernan) Subsequent to March —after March 2nd, 1939, will you tell me whether or not you had a conversation with Mr. Forrest Riley? A. Yes, I did.

Q. And can you place that more definitely?

A. It was the date that I think—it was March 21st.

Q. Now, where was this conversation held?

A. At my home.

Q. Was anyone else present?

A. Not in the immediate room.

Q. About what time of day did this conversation take place?

A. 2:30 in the afternoon.

Q. And will you tell us what you said to Mr. Riley and what Mr. Riley said to you?

Mr. Clark: Objected to upon the ground it is incompetent, irrelevant and immaterial and hearsay as to all the respondents in this proceeding, no authority having been shown from any of the respondents to Mr. Riley to speak for them with respect to any matters under investigation.

Trial Examiner Lindsay: She may answer. [2037]

(Testimony of Margaret A. Dunn.)

The Witness: I asked him if he would be a witness—I was told to produce two witnesses for a hearing with the National Relations Board—and I asked him if he would be a witness. Well then, he proceeded to tell me just what he thought about my having anything to do with the National Relations Board.

Q. (By Mr. McTernan) Will you tell us what he said?

A. Well, he said they were just a bunch——

Mr. Clark (Interrupting): Same objection, of course. [2038]

Trial Examiner Lindsay: The same ruling. She may answer.

Q. (By Mr. McTernan) Just proceed and tell us what he said?

A. He said they are a bunch of skunks.

Q. Did he say anything more?

A. Went on and told me I might as well have a revolution as have the National Relations Board come down here. He asked me why I was doing it.

Mr. Clark: May the objection be deemed to run to this entire testimony?

Mr. McTernan: So stipulated.

Q. And was anything else said?

A. Quite a little bit.

Q. Will you tell us just what was said, Mrs. Dunn?

A. He told me just how they felt about it, about the National Relations Board coming into Cor-

(Testimony of Margaret A. Dunn.)

coran, and butting into their affairs, and said that they just weren't going to tolerate the National Relations Board men coming in here as they felt like they could handle their own business in their own way.

I told him that I didn't have anything to do with that, that wasn't why I was brought in. I didn't have anything to do with them whatsoever and I told him—we were talking about it—I told him about the girls. He mentioned the fact that the girls had been in the picket car. I questioned [2039] him three different times and made him acknowledge to me that he only saw the girls talking to Mr. Prior.

Q. (By Mr. McTernan) Outside the car?

A. Outside the car.

He told me of just what the results would be if the National Relations Board came.

I said, "All right, just as much pressure is brought to bear on Mr. Glenn to dismiss me, you go down there and bring pressure to bear to take me back on my work."

Q. What did he say to that?

A. He said he didn't think he could do that.

Q. Now, you have said that he told you that "they felt" so and so.

Did he say who "they" were?

A. Naturally referred to the farmers.

Mr. Clark: Just a minute. I ask that that go out, Mr. Examiner, as not responsive, and also calls

(Testimony of Margaret A. Dunn.)

for the opinion and conclusion of this witness. The answer, as I understand it, was that naturally he referred to the farmers.

Trial Examiner Lindsay: Yes. It may go out. Read the question, please?

(The question referred to was read by the reporter, as set forth above.)

Q. (By Mr. McTernan) Mrs. Dunn, whom did you understand he meant when he said "they?"

[2040]

Mr. Clark: Objected to upon the ground it is incompetent, irrelevant and immaterial, and has no bearing at all upon any of the issues in this matter, and calls for the opinion and conclusion of this witness, and is improper redirect examination. In other words, I take it that is what was said, the other objection having been overruled, that was what was said may come in, but not this lady's conclusions.

Trial Examiner Lindsay: Well, in the first place, this is not redirect examination.

Mr. Clark: I said "direct examination."

Trial Examiner Lindsay: Did you? I am sorry.

You may tell us what he said, if anything, about who they were.

The Witness: (Pause). I can't answer that direct because it was just taken for granted that is who they were implying.

Mr. Clark: I ask that the last go out, "as taken for granted."

(Testimony of Margaret A. Dunn.)

Trial Examiner Lindsay: It may stand.

Mr. Clark: I would like the record to show, Mr. Examiner, that my motion to strike the answer of the witness in that regard is based upon the ground that it is simply her conclusion and opinion.

Trial Examiner Lindsay: Did you have a motion to strike?

Mr. Clark: I asked that it may go out which, I take it, is one way of making a motion to strike. If there is any mis- [2041] understanding, I move to strike the answer at the present time on the ground that it is simply the conclusion of this lady.

Trial Examiner Lindsay: The motion is denied.

Q. (By Mr. McTernan) In this conversation, Mrs. Dunn, did Mr. Riley say what he would do if the National Labor Relations Board re-instated you? A. He did.

Q. What did he say about that?

Mr. Clark: Objected to on the ground it is hearsay, incompetent, irrelevant and immaterial.

Trial Examiner Lindsay: She may answer.

The Witness: He would take out his phone and use his influence to see how many he could get taken out.

Q. (By Mr. McTernan) Did you have any conversation that day, March 21st or on or about March 21st, with any other people concerning this matter?

A. Yes, I did.

Q. With whom did you have such conversations?

A. Russel Slaybough and Mr. Boyett.

(Testimony of Margaret A. Dunn.)

Q. Was that one conversation? I mean did you have a conversation with Mr. Slaybough and Boyett together?

A. Not together; separately.

Q. With whom did you first have a conversation? With whom did you first have the conversation after you had a conversation with Mr. Riley? [2042]

A. Russel Slaybough.

Q. Where was this conversation held?

A. Out in the back yard.

Q. What back yard? Your back yard?

A. Yes.

Q. And was anyone else present?

A. My daughter Margaret.

Q. And about what time of day was this?

A. Around about 3:00 or 3:15.

Q. Will you tell us what you said to him, and what he said to you?

Mr. Clark: May I have the day fixed?

Trial Examiner Lindsay: Yes.

Mr. McTernan: I think we fixed it as the same day upon which she had the conversation with Mr. Riley.

The Witness: March 21st.

Q. (By Mr. McTernan) Is that right, Mrs. Dunn? A. Yes.

Q. Now, will you give us the conversation you had at that time, Mrs. Dunn?

Mr. Clark: Objected to on the ground it is hear-

(Testimony of Margaret A. Dunn.)

say, incompetent, irrelevant and immaterial as to all Respondents.

Trial Examiner Lindsay: She may answer. [2043]

The Witness: I asked him if it was so, if I had this hearing if it would hurt different people around Corcoran and would cause this upheaval that Mr. Riley claimed and he answered, "Yes, it would."

And I told him inasmuch as I felt duty bound to the people of the Corcoran, if it was going to do that, I would just ask the National Relations Board to withdraw it and not have a hearing.

Q. (By Mr. McTernan) Is that all that was said with Mr. Slaybough? A. Yes.

Q. And then I think you said you had a conversation following that with Mr. Boyett?

A. Yes.

Q. Was that held in the same place?

A. In the front room of my home.

Q. About what time was that?

A. I think between about 3:30 or 4:00 o'clock.

Q. Was anyone else present?

A. No, there was not.

Q. Was it on the same day as the other two conversations you have just testified to?

A. Yes.

Q. Will you tell us what you said to Mr. Boyett and what Mr. Boyett said to you? [2044]

(Testimony of Margaret A. Dunn.)

Mr. Clark: Objected to upon the ground it is incompetent, irrelevant and immaterial and hearsay as to all respondents.

Trial Examiner Lindsay: She may answer.

The Witness: I told him of the National Relations Board sending me a letter stating they wanted an investigation and a hearing and that I had talked to Forrest Riley and Russell Slaybough; they had given me their opinion about it and I was going to withdraw my charge just to help out the situation as I felt that I didn't want to make a disturbance in the town. We talked at quite length. Mr. Boyett told me that Clarence Salyer and Forrest Riley had approached him with this petition and he told them to tear it up and have nothing to do with it and that he wouldn't either.

Mr. Clark: That is Boyett that said that? By "he" you mean Mr. Boyett?

The Witness: Yes.

Q. (By Mr. McTernan) As a result of these conversations, did you take any action relative to your charge that you had filed with the National Labor Relations Board?

A. I sent a telegram to them.

(Thereupon the document above referred to was received and marked as "Board's Exhibit No. 21 for identification.)

(The document referred to was passed to Mr. Clark.) [2045]

Q. (By Mr. McTernan) Mrs. Dunn, I hand

(Testimony of Margaret A. Dunn.)

you a Postal Telegraph message addressed to Alice M. Rossiter, National Labor Relations Board, 1095 Market Street, dated March 21st, and ask you if you have ever seen that.

A. Yes, I have.

Q. Did you send that telegram?

A. I did.

Q. And who did you—did you send it to Mrs. Rossiter as a result of these conversations you have just testified to?

A. Yes.

Mr McTernan: I offer Board's for identification No. 21 in evidence.

Mr. Clark: I have no objection except the general objection to this entire line of testimony.

Trial Examiner Lindsay: Board's Exhibit 21 for identification received.

(Thereupon the document above referred to was received in evidence and marked as Board's Exhibit No. 21.)

BOARD'S EXHIBIT NO. 21

[Postal Telegraph Form]

1939 Mar 21 PM 4:44

F64 9—Hanford Calif 21 410P

Alice M. *Resseter*

National Labor Relations Board 1095 Market St.

Do Not Send Representative Case XXC 619

Everything Satisfactory

MARGARET A. DUNN

[Endorsed]: Filed 6/7/39.

(Testimony of Margaret A. Dunn.)

Mr. McTernan: Will you mark this, please.

(Thereupon the document above referred to was received and marked Board's Exhibit No. 22 for identification.)

(The document referred to was passed to Mr. Clark.)

Q. (By Mr. McTernan) Mrs. Dunn, I hand you a letter dated April 4, 1939, addressed to the National Labor Relations Board, attention Mrs. Rositer, Regional Director, and ask [2046] you if you have seen that before?

A. (Examining document) Yes, sir.

Q. Does that letter—is that letter in your handwriting? A. Yes, sir.

Q. Is that your signature on it there at the bottom of it? A. Yes, sir.

Q. Now, in this letter you said "certain interested parties——"

Mr. Clark (Interrupting): Now, just a minute, please.

May I ask, Mr. Examiner, whether there is to be an offer before the exhibit is read?

Trial Examiner Lindsay: Oh, yes.

Mr. McTernan: I offer it in evidence, then.

Mr. Clark: To which we object on the ground it is incompetent, irrelevant and immaterial and hearsay as to all respondents.

(The document referred to was passed to Trial Examiner Lindsay.)

(Testimony of Margaret A. Dunn.)

Mr. Clark: Also self-serving, your Honor.

Trial Examiner Lindsay: Board's Exhibit 22 is received in evidence.

(Thereupon the document above referred to was received in evidence and marked Board's Exhibit No. 22.)

BOARD'S EXHIBIT No. 22

Corcoran, Calif.

April 4, '39.

National Labor Relations Board

Att.: Miss Rosseter

Regional Director

In regard to case No. XX-C-619. Will say that it has not been settled satisfactory to date and would appreciate you holding the case open until you hear from me again.

Certain interested parties have said I would get my work back if I didn't press charges but I haven't gone back to work yet. Respectfully,

MARGARET A. DUNN.

[Endorsed]: Filed 6/7/39.

Q. (By Mr. McTernan) Mrs. Dunn, was this letter written by you on or about the date that it bears? [2047]

A. What did you say?

Q. Was that letter written on or about the date April 4?

A. Yes, sir.

(Testimony of Margaret A. Dunn.)

Q. Which appears on the top of the letter?

A. Yes, it was.

Q. Now, in the second paragraph you say "certain interested parties have said that I would get my job back if I didn't press charges, but I haven't gone back to work yet."

Now, to whom did you refer when you said "certain interested parties"?

Mr. Clark: Objected to upon the ground it is self-serving.

Trial Examiner Lindsay: She may answer.

The Witness: Mr. Boyett.

Q. (By Mr. McTernan): Had he told you he would try to get your job back? A. He had.

Q. When did he tell you that?

A. The same afternoon, March 21st, when I had that conversation with him.

Q. Now, Mrs. Dunn, on or about April 12, 1939, will you tell us whether or not you had a conversation with Mr. Fred Galusha? A. I did.

Q. Where was that conversation held? [2048]

A. At my home.

Q. At what time of day?

A. Around about 8:30 in the evening.

Q. Was anyone else present, in hearing?

A. My son Walter, my daughter Margaret, and Jack.

Mr. Clark: May I ask who Jack is?

The Witness: My older son.

Q. (By Mr. McTernan): Will you tell us what

(Testimony of Margaret A. Dunn.)

you said to Mr. Galusha and what Mr. Galusha said to you on that occasion?

Mr. Clark: Objected to on the ground it is incompetent, irrelevant and immaterial and hearsay as to all of the respondents in this proceeding.

Trial Examiner Lindsay: She may answer.

The Witness: He said he had had a long conversation with Mr. Boyett out at his office and said things were looking pretty serious around town if I was going to go ahead with this and get an investigation by the National Relations Board. He said that Mr. Boyett told him there had been over 40 get together and said that they could bring an awful lot of damage to my family and to those who might testify for me.

Q. (By Mr. McTernan): Did he say what they could do to bring this damage upon you and your family?

A. Yes. He said he could hurt my husband's business [2049] through the Standard Oil; hurt my son Walter through his association, working for the San Joaquin Ginning Company; also Mr. Galusha's place as manager of the San Joaquin Ginning Company; my son was giving music lessons and my daughter was working part time at the variety store in town and also at the Charlene's Beauty Shop.

Q. Was that all that was said on that occasion?

A. Well, we discussed it at quite length.

Q. Well, what you have given us, was that the substance of what was said?

(Testimony of Margaret A. Dunn.)

A. I told him I didn't think it was right, that I had to withdraw my charges when nothing had been done for my reinstatement; that I felt humiliated, and the only way I could make—vindicate myself in the town of Corcoran was to be reinstated with my work at the Corcoran Telephone Exchange.

Mr. Clark: Well, may the objection be deemed to have run to this entire conversation?

Mr. McTernan: Yes, certainly, Mr. Clark. So stipulated.

Q. Now, following that conversation, can you tell us whether or not you had a conversation with Mr. Boyett?

A. The next evening at my home.

Q. Was anyone else present while this conversation took place?

A. My daughter, Margaret.

Q. Will you tell us what you said to Mr. Boyett and what [2050] Mr. Boyett said to you?

Mr. Clark: May I have the date fixed?

Q. (By Mr. McTernan) Can you tell us the date of that, or approximately the day, Mrs. Dunn?

A. Around about April 14th, 12th or 14th.

Q. Was that the day after this conversation you have just testified to with Mr. Galusha?

A. Yes.

Q. Will you tell us what you said to Mr. Boyett and what Mr. Boyett said to you on that occasion?

A. I asked—

(Testimony of Margaret A. Dunn.)

Mr. Clark (Interrupting): I am going to object to that on the ground it is hearsay as to all of the respondents; and incompetent, irrelevant and immaterial, no authority having been shown to Mr. Boyett from any of the respondents to take part in this affair.

Trial Examiner Lindsay: She may answer. Read the question, Mr. Reporter, please.

(The record referred to was read by the reporter, as set forth above.)

The Witness: I asked Mr. Boyett if the conversation I had with Mr. Galusha the evening before was so, and he said absolutely it was, that it was just—he felt very bad about it, and he hated to have to tell me those things, but that the people or whoever he was referring to were very indignant; it [2051] was going to cause an awful lot of hurt, friend pitted against friend, and it would just cause an awful lot of discord in the town of Corcoran. [2052]

Q. (By Mr. McTernan) Did he also tell you what this group of men could do to you and your family?

Mr. Clark: I object to that upon the ground it is assuming something not in evidence, “this group of men.” So far as I have heard, we have had reference to people and “they” and things of that sort.

Trial Examiner Lindsay: I believe that the testimony of this lady is that in one conversation

(Testimony of Margaret A. Dunn.)

there were forty men mentioned about a petition. She may answer, and you may have an exception.

Mr. McTernan: Will you read the question, please?

(The question referred to was read by the reporter, as set forth above.)

The Witness: Yes, he did.

Q. (By Mr. McTernan) What did he say—did he say the same thing that Mr. Galusha had said the night before?

Mr. Clark: Same objection.

Trial Examiner Lindsay: Same ruling.

The Witness: Yes, he did.

Mr. McTernan: I wish to mark this Board's Exhibit for identification next in order.

(Thereupon, the document above referred to was marked as Board's Exhibit No. 23 for identification.)

(The document referred to was passed to Mr. Clark.)

Q. (By Mr. McTernan) Now, as a result of these conversations [2053] Mrs. Dunn, to which you have testified to, did you take any action?

A. Yes, I did.

Q. And what action did you take?

A. I sent a letter to the National Relations Board in San Francisco, personally to Mr. Shaw, telling him that I wanted to withdraw my charges, to not have them pressed.

(Testimony of Margaret A. Dunn.)

Q. I hand you Board's for identification Number 23, and ask you if that is the letter you sent to Mr. Shaw?

A. (Examining document) Yes, it was.

Mr. McTernan: I will offer Board's for identification Number 23 in evidence.

Mr. Clark: Objected to upon the ground it is incompetent, irrelevant and immaterial, and hearsay as to all Respondents.

(The document referred to was passed to the Trial Examiner.)

Trial Examiner Lindsay: Board's Exhibit No. 23 is received in evidence.

(Thereupon, the document above referred to was received in evidence and marked as Board's Exhibit No. 23.)

BOARD'S EXHIBIT No. 23.

Corcoran, Calif.

April 14, 1939.

National Labor Relations Board

San Francisco, Calif.

Dear Mr. Shaw:

I would like very much to have you drop my case against the Corcoran Telephone Exchange, as there are too many personal friends, as well as members of my family, involved. We feel sure a satisfactory settlement will be made in a short time. We feel you would help us more by dropping

(Testimony of Margaret A. Dunn.)

the case than continuing it. I will not be here for interviews with anyone.

Sincerely,

MARGARET A. DUNN.

State of California,

County of Kings—ss.

On this 13 day of April in the year one thousand nine hundred and Thirty-nine before me, C. H. McDonald, a Notary Public in and for the County of Kings, State of California, residing therein, duly commissioned and sworn, personally appeared Margaret A. Dunn, known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal, in the County of Kings the day and year in this certificate first above written.

(Seal) C. H. McDONALD,
Notary Public in and for the County of Kings,
State of California.

My Commission Expires Mar. 9, 1941.

[Endorsed]: Filed 6/7/39.

Q. (By Mr. McTernan) When was this letter written, Mrs. Dunn?

(Testimony of Margaret A. Dunn.)

A. About 8:30 in the evening.

Q. Was Mr. Boyett still present when the letter was written? A. Yes, he was.

Q. Did he help you write it? [2054]

A. Yes, he did.

Q. Who suggested that you have it Notarized?

Mr. Clark: I object to that upon the ground it is incompetent, irrelevant and immaterial, and hearsay.

Trial Examiner Lindsay: She may answer.

The Witness: I do not remember.

Q. (By Mr. McTernan) What—did the Notary come that night to notarize the letter? A. Yes.

Mr. Clark: Same objection.

Trial Examiner Lindsay: Same ruling.

The Witness: Yes, he did.

Q. (By Mr. McTernan) Who was the Notary?

A. Carl McDonald.

Q. Is it true that he is employed by J. B. Boyett?

Mr. Clark: I object to that on the ground it is incompetent, irrelevant and immaterial.

Trial Examiner Lindsay: She may answer.

The Witness: Yes, he does.

Q. (By Mr. McTernan) Who mailed the letter, Mrs. Dunn?

Mr. Clark: The same objection, and may be the objection be deemed to run to this entire line of testimony?

Mr. McTernan: So stipulated.

(Testimony of Margaret A. Dunn.)

Trial Examiner Lindsay: Yes. She may answer.

The Witness: Mr. McDonald. [2055]

Mr. McTernan: You may inquire.

Mr. Clark: Very well.

Cross Examination

Q. (By Mr. Clark) Mrs. Dunn, are you married? A. Yes, sir.

Q. Is your husband living? A. Yes, sir.

Q. How many children have you? A. Four.

Mr. Clark: May I have the Exhibits, please, particularly the formal file, and particularly the charge Mrs. Dunn filed and swore to on March 13th, 1939.

Mr. McTernan: Will you accept a copy?

Mr. Clark: Let us get the original. I think I have it.

Q. Now, Mrs. Dunn, I want to show you the original of the charge filed by you with the National Labor Relations Board of the Twentieth Region against the Corcoran Telephone Exchange on March 13th, 1939, or rather notarized by you on that day.

Do you remember the occasion of your swearing to this charge against the Corcoran Telephone Exchange?

A. I would have to have that question over again.

Mr. Clark: May I have it read, Mr. Examiner?

Trial Examiner Lindsay: Yes.

(The record referred to was read by the reporter, as set forth above.) [2056]

(Testimony of Margaret A. Dunn.)

The Witness: Because I was dismissed from my work.

Q. (By Mr. Clark) Do you remember the place where you swore to it, the occasion of having sworn to it?

A. Yes, out at the San Joaquin Ginning Company.

Q. You anticipated my next question, Mrs. Dunn.

Am I correct in stating that this charge was notarized by Mr. Fred Galusha? A. Yes, sir.

Q. So that he was present when you swore to it, is that not right? A. Yes, sir.

Q. Who wrote the substance of the charge, that is, the text of it? A. I did.

Mr. McTernan: I object.

Mr. Mouritsen: I object to that on the ground it is incompetent, irrelevant and immaterial.

Mr. Clark: Submit it.

Trial Examiner Lindsay: She has already answered it.

Q. (By Mr. Clark) Did you do the typing on it? A. No, sir.

Q. Who typed it?

Mr. Mouritsen: Objected to as incompetent, irrelevant and immaterial. What difference would it make?

Mr. Clark: I think it will appear in a minute. [2057]

Trial Examiner Lindsay: She may answer.

(Testimony of Margaret A. Dunn.)

The Witness: My daughter Margaret.

Q. (By Mr. Clark) Where?

A. At our home.

Q. Have you a typewriter at your home?

A. Two.

Q. And was this typed on one of those typewriters? A. Yes, sir.

Q. During the noon recess, will you bring me exemplars from each of these typewriters, that is, a piece of paper upon which you have typed from each typewriter? Will you do that? A. Yes.

Mr. Mouritsen: Objected to as incompetent, irrelevant and immaterial.

Mr. Clark: I will submit it. It goes to the credibility of this witness, the authenticity of her answer.

Trial Examiner Lindsay: May I have that objection?

(The record referred to was read by the reporter, as set forth above.)

Mr. Clark: I want her simply to bring, Mr. Examiner, exemplars from each typewriter so I can compare it.

Trial Examiner Lindsay: I understand.

Mr. Mouritsen: If it is for the purpose of impeaching her on some immaterial matter, that does not tend to prove or disprove the issues in this matter. [2058]

Mr. Clark: I wouldn't say the verity of the charge which she is relying on is an immaterial matter.

(Testimony of Margaret A. Dunn.)

Mr. Mouritsen: Well, of course, the question does not go to that, Mr. Examiner.

Trial Examiner Lindsay: I am going to sustain the objection to that.

Mr. Clark: Very well.

Q. How did you happen to go to Mr. Galusha to have him notarize this?

Mr. Mouritsen: That is objected to as incompetent, irrelevant and immaterial.

Mr. Clark: I will submit it.

Trial Examiner Lindsay: She may answer that.

The Witness: He had been a Notary, and he told me he would be glad to notarize any papers that I had.

Q. (By Mr. Clark) Had you discussed this matter with him prior to March 13th of 1939?

Mr. Mouritsen: Objected to as incompetent, irrelevant and immaterial with whomever she talked it over.

The Witness: Yes, I talked it over.

Mr. Mouritsen: I move it go out.

Mr. Clark: It has been ruled on.

Mr. Mouritsen: I am sorry.

Q. (By Mr. Clark) The answer is you have?

A. I have. [2059]

Q. Who is Mr. Galusha?

A. Manager of the San Joaquin Ginning Company of Corcoran.

Q. Am I correct in stating that the San Joaquin Ginning Company is a competitor of the J. G. Boswell Company?

(Testimony of Margaret A. Dunn.)

Mr. Mouritsen: Objected to as incompetent, irrelevant and immaterial.

Q. (By Mr. Clark) If you know?

Trial Examiner Lindsay: She may answer, if she knows.

The Witness: I don't know if they are competitors or not. I know they are another ginning company.

Q. (By Mr. Clark) How long have you known Mr. Galusha? A. Five years.

Q. And how well do you know him, Mrs. Dunn?

A. My two sons worked for him a length of time.

Q. Well, do I understand that you were discussing your personal affairs, we will say, that is, your employment, with Mr. Galusha for some period of time prior to March 13th, 1939?

Mr. Mouritsen: Objected to as confusing and indefinite, vague, misleading.

Trial Examiner Lindsay: Sustained.

Q. (By Mr. Clark) Did Mr. Galusha advise you to file this charge? A. Absolutely not.

Q. I repeat my question, Mrs. Dunn: How did you happen to go to him to have him notarize it? [2060]

Mr. Mouritsen: Objected to as already asked and answered.

Trial Examiner Lindsay: Sustained.

Q. (By Mr. Clark) Did you discuss it with him at that time?

(Testimony of Margaret A. Dunn.)

Mr. Mouritsen: Objected to as vague and indefinite.

Trial Examiner Lindsay: Do you mean at the time she had him notarize it?

Mr. Clark: March 13th, 1939.

Mr. Mouritsen: To discuss what?

Mr. Clark: The charge.

Trial Examiner Lindsay: She may answer.

The Witness: I did not.

Q. (By Mr. Clark) You did not?

A. I did not.

Q. As a matter of fact, Mrs. Dunn, hadn't you on various occasions gone out of town with Mr. Galusha?

Mr. McTernan: Objected to as incompetent, irrelevant and immaterial.

Trial Examiner Lindsay: Sustained. If you are through having her with that Exhibit, will you step down.

Mr. Clark: I am not through.

Is the objection sustained to that?

Trial Examiner Lindsay: Yes.

Q. (By Mr. Clark) I want to direct your attention, Mrs. Dunn, to the final language in the charge which we have been discussing, namely, that sworn to by you on March 13th, 1939. [2061]

Reading as follows: "They, however, were receiving a personal message through Mr. Prior from Drexel Sprecher, an N. L. R. B. Attorney whom one of my daughters met in Los Angeles long before there was any labor trouble in Corcoran."

(Testimony of Margaret A. Dunn.)

Now, will you please tell us which of your daughters you were referring to in that statement?

A. My daughter Dorothy.

Q. Very well.

Now, of course, this statement is true, isn't it, namely, that your daughter Dorothy had met Mr. Sprecher long before there was any labor trouble in Corcoran?

Mr. Mouritsen: Objected to as incompetent, irrelevant and immaterial.

Mr. Clark: Very well. I can get at it in another way.

(Laughter from the audience.)

Trial Examiner Lindsay: Just a moment. If I hear any laughing out there, I am going to absolutely put the people that are laughing out of this room.

Q. (By Mr. Clark) When was the——

Trial Examiner Lindsay (Interrupting): Just a moment.

Mr. Clark: Very well. Excuse me, Mr. Examiner.

Trial Examiner Lindsay: You may proceed.

Q. (By Mr. Clark) Now, I believe on your direct examination you told us that you had known about the trouble, so-called, at the Boswell plant. [2062]

Mr. McTernan: Objected to as assuming something not in evidence.

Mr. Clark: I am asking her that. I will reframe the question.

(Testimony of Margaret A. Dunn.)

Q. Did you tell us on your direct examination that you had heard about the trouble at the Boswell plant?

Mr. Mouritsen: May we have some definite time fixed?

Trial Examiner Lindsay: Yes.

Q. (By Mr. Clark) When it occurred in November of last year.

Mr. Mouritsen: I submit, Mr. Examiner, that that is vague and indefinite. Counsel said on a number of occasions there are a number of incidents contained in that general classification, and, therefore, the question is vague and indefinite.

Mr. Clark: I will submit it. The lady started to nod her head, I think, anyway.

The Witness: No, I didn't, Mr. Clark.

Mr. Clark: Didn't you?

Let me have the record read back, Mr. Examiner.

Trial Examiner Lindsay: Yes, read the record.

(The record referred to was read by the reporter, as set forth above.) [2063]

Mr. Clark: I will ask that that question be answered.

Mr. Mouritsen: And I believe the record shows an objection on the ground it is vague and indefinite.

Trial Examiner Lindsay: Well, she may answer.

The Witness: The question is still vague to me what he wants me to answer.

(Testimony of Margaret A. Dunn.)

Q. (By Mr. Clark) Let me ask you this, please, and I will withdraw the prior question.

Did you hear about their being some disturbance at the Boswell plant last November, namely, November, 1938?

Mr. McTernan: Objected to as vague and indefinite; what kind of a disturbance?

Mr. Clark: I don't know why we are here either, Mr. McTernan.

Mr. McTernan: Let's be definite about it.

Trial Examiner Lindsay: May I have the question?

(The question referred to was read by the reporter, as set forth above.)

Trial Examiner Lindsay: What was the date?

The Reporter: November, 1938.

Mr. Clark: I said in November, 1938, yes.

Trial Examiner Lindsay: Do you understand the question?

The Witness: Yes; I don't remember.

Q. (By Mr. Clark) Well, you have heard the talk around the town from time to time concerning the Boswell situation [2064] ever since it has existed, haven't you?

Mr. Mouritsen: I object, Mr. Examiner. It is utterly impossible to give an intelligent answer to a question like that.

Trial Examiner Lindsay: Well, do you understand the question, Mrs. Dunn?

The Witness: Yes, I do.

(Testimony of Margaret A. Dunn.)

Trial Examiner Lindsay: She may answer.

Q. (By Mr. Clark) Will you please answer it for me.

Trial Examiner Lindsay: Well, now——

Mr. Clark (Interrupting): I am sorry.

Trial Examiner Lindsay: I told her to answer.

The Witness: I have.

Q. (By Mr. Clark) I would like to direct your attention and read to you and ask you to follow with me while I read in certain testimony given by your daughter, Dorothy Dunn, in this proceeding on Saturday morning, May 27th of this year as follows:

“Cross Examination.

“Q. (By Mr. Wingrove) You say you met Mr. Strecher when you came to Corcoran in the bus with him?”

You will stipulate that is “Sprecher”?

Mr. McTernan: Yes.

“A. Yes.

“Q. This was about February 1st? [2065]

“Yes, sir.”

Now, will you stipulate, Mr. McTernan, that the date referred to was February 1st, 1939?

Mr. McTernan: So stipulated.

Mr. Clark: Very well.

And I direct your attention to the further testimony given by your daughter, Dorothy Dunn, at the same time and place, as follows:

(Testimony of Margaret A. Dunn.)

“Cross Examination.

“Q. (By Mr. Clark) Miss Dunn, had you known Mr. Sprecher prior to the time you met him at the bus station?

“A. No.

“Q. You had not met him prior to the occasion you have told us about?

“A. No.

“Q. You got acquainted with him on the bus coming up here to Corcoran, is that right?

“A. Yes.”

Will you please tell us whether that is true?

Trial Examiner Lindsay: If you know.

The Witness: Why, I think it is. If she said it was, it is.

Q. (By Mr. Clark) Will you please explain to us, or rather his Honor, Mrs. Dunn, what you meant in the charge sworn to by you on March 13th of this year when you said: “They, [2066] however, were repeating a personal message through Mr. Prior from Drexel Sprecher, an N.L.R.B. attorney who one of my daughters”—whom you have already identified as Dorothy—“met in Los Angeles long before there was any labor trouble in Corcoran”?

A. Yes, I can answer that.

I was under the impression from her being home just a few times—she was only home a couple of days—and I understood this was the young man that she had met.

Q. Down in Los Angeles?

(Testimony of Margaret A. Dunn.)

A. Yes, I understood that, and she corrected me later after I had sent that letter in.

Q. And, Mrs. Dunn, is that just about the kind of information upon which you based the rest of the allegations in this complaint?

Trial Examiner Lindsay: Off the record.

(Here followed discussion off the record.)

Mr. Mouritsen: Mr. Examiner, I desire at this time to object to the question upon the ground it is argumentative.

Trial Examiner Lindsay: All right.

Mr. Clark: Submit it.

Trial Examiner Lindsay: Sustained.

Mr. Clark: May we have a recess? It is a quarter after 12:00.

Trial Examiner Lindsay: Yes, we will have a 20-minute [2067] recess.

(At this point a short recess was taken, after which the hearing proceeded as follows:)

Trial Examiner Lindsay: Let's have it quiet. Hearing called to order.

Mr. Clark: Respondents are ready.

Mr. Mouritsen: Ready for the Board.

Q. (By Mr. Clark) Now, Mrs. Dunn, do I understand that you signed the original charge which is marked Board's Exhibit 1(q) in this case dated March 13, 1939, and to which your attention has already been directed at the office of the San Joaquin Ginning Company? A. Yes, sir.

(Testimony of Margaret A. Dunn.)

Q. And is that here in Corcoran?

A. Yes, sir.

Q. Now, will you please state whether or not the document was typed at the office of the San Joaquin Ginning Company? A. No, sir.

Q. In other words, as I understand your testimony this morning, it was typed by one of your daughters at your home prior to the time you took it over to the office of the San Joaquin Ginning Company? A. Yes, sir.

Q. Is that correct? A. Yes, sir. [2068]

Q. Which daughter typed it? A. Margaret.

Q. Then did Mr. Galusha look it over before you signed it?

A. He just looked at my signature.

Q. Did you just walk into the office of the San Joaquin Ginning Company and sign it without his looking at it?

A. He watched me put my signature——

Q. (Interrupting): To the document?

A. Yes.

Q. And then what? He notarized it?

A. Yes, sir.

Q. That is right? A. Yes, sir.

Q. And did he mail it to the Labor Board?

A. No, sir.

Q. Who did, please? A. My daughter did.

Q. Did you then bring it back to your home?

A. Yes, sir.

Q. And delivered it to your daughter?

(Testimony of Margaret A. Dunn.)

A. Yes, sir.

Q. Now, you were seriously ill some year and a half prior to the time this complaint was filed, weren't you?

A. Three years.

Q. Was it three years? And I don't want to go into your [2069] personal affairs, but do I understand that some physician diagnosed your trouble as cancer?

Trial Examiner Lindsay: Well——

Mr. Clark (Interrupting): It is preliminary, Mr. Examiner.

Trial Examiner Lindsay: You don't have to answer that if you don't wish. I believe that is entirely outside.

Mr. Clark: I don't think it is. It is necessary to what I am about to develop.

Q. At any rate, Mrs. Dunn, you kept on at your position, didn't you, with Mr. Glenn?

A. Yes, sir.

Q. And will you please tell us during the year immediately preceding the first of March of this year whether or not you were in pain from time to time while working at the job?

A. Yes, sir.

Q. That is true, isn't it?

A. Yes, sir.

Q. Yes.

And you mentioned that fact to the other operators there on occasions and to Mr. Glenn, didn't you?

A. Yes, sir.

Q. Now, how frequent were these attacks—would these attacks take you during the year just

(Testimony of Margaret A. Dunn.)

preceding March 1st of this year and while you were working? That is all I am in- [2070] terested in.

A. I don't know.

Q. Can you give us a fair approximation of it?

A. I cannot.

Q. Were they daily? A. No, sir.

Q. In order to allay that pain, Mrs. Dunn, will you please tell us whether or not you kept some liquor available in the ice box in the office?

A. I did not.

Q. Will you please tell us whether or not during the year immediately preceding your discharge on March 1st you on any occasion drank any liquor while you were on duty? A. Twice.

Q. You did on two——

A. (Interrupting): Not on duty, just one time on duty, 15 minutes before I left duty, and it was given to me by Mrs. Glenn.

Q. All I am concerned with is this, and I want a fair answer on it: As to whether or not—not on one occasion or two occasions—but whether or not as a frequent thing you had several drinks while you were on duty because of your condition, that is, to allay the pain. A. No, sir.

Q. And are you positive and do you want to swear in this [2071] case, that you did not keep in the ice box at the office of the Corcoran Telephone Exchange on different occasions a bottle of liquor?

A. I did not.

Q. From which you drank while on duty?

(Testimony of Margaret A. Dunn.)

A. I did not.

Q. You are positive of that? A. Positive.

Q. All right.

Now, during the last year and immediately prior to March 1st of 1939 will you please tell us whether on any occasions and while you were on duty you got into arguments or disputes with customers of the Corcoran Telephone Exchange while putting in their calls?

Mr. Mouritsen: Objected to as vague and indefinite.

Mr. Clark: It is the best I can do. I have to ask the preliminary question. I want to know whether on any occasion she did.

Trial Examiner Lindsay: Specify the occasion.

Mr. Clark: Well, Mr. Examiner, I have the right to ask her, I submit.

Trial Examiner Lindsay: Proceed.

Mr. Clark: Will you read the question?

(The question referred to was read by the reporter, as set forth above.) [2072]

The Witness: Not any more than any other operator.

Q. (By Mr. Clark) Well, will you please answer my question and then explain.

The question is: Did you get into such arguments?

A. Yes, I did.

Q. Do you remember any of those specifically?

(Testimony of Margaret A. Dunn.)

A. I remember one very specifically with Mr. Crary at the bank.

Q. At what bank, please?

A. First National Bank of Corcoran.

Q. Now, without going into the details of it, did you have words with Mr. Crary about whether or not his call was going through fast enough?

A. I merely asked him to control his temper so I could give him good service. [2073]

Q. I see.

Now, were there any other occasions where you had words with customers?

A. There have been plenty.

Q. There have been plenty?

A. Throughout the fifteen years that I have worked there.

Q. Yes.

I am speaking particularly of the last year, that is, the year just prior to March 1st, 1939?

A. No, there had been less than there ever had been before.

Q. I see.

During the past year, Mrs. Dunn, that is, up to March 1st of 1939, did you on any occasion listen in on telephone conversations and announce that fact to the person talking? A. I did not.

Q. You are sure of that?

A. Let me have your question over again?

Mr. Clark: Read the question.

Trial Examiner Lindsay: Read the question.

(Testimony of Margaret A. Dunn.)

(The question referred to was read by the reporter, as set forth above.)

The Witness: I cannot answer. I do not know.

Q. (By Mr. Clark) Well, did you on occasions listen in to telephone conversations?

A. No, sir. [2074]

Q. Are you sure of that?

A. I am sure of that.

Q. Of course, you know that is contrary to the rules of the Exchange, don't you?

A. It isn't on long distance calls.

Q. In other words, you are allowed to listen in, are you? A. Yes, sir.

Q. And did you listen in? A. No, sir.

Q. I see.

Now, were you aware during the year 1939, that is, up to March 1st of 1939, of any of the customers of the Exchange making complaints about the service you were giving?

A. They complain constantly about all of the telephone work.

Q. I am asking particularly about you?

A. No.

Q. Were there any complaints made about you that you were aware of? A. No, sir.

Q. Are you sure of that?

A. I am sure of that.

Q. Didn't Mr. Glenn, on the occasion of the first talk he had with you about your staying on at the

(Testimony of Margaret A. Dunn.)

Corcoran Telephone Exchange, and which you placed this morning, I think, as being sometime in February of 1939, tell you that complaints had come [2075] in about you? A. No, sir, he did not.

Q. Didn't he on that occasion call attention to your illness, Mrs. Dunn, and ask you why you didn't give up your position in view of the fact that your husband was working? A. Not the first time.

Q. When did he say that?

A. The second time.

Q. Now, will you place that for us, please?

A. (Pause.)

Q. As nearly as you can?

A. Well, it is on the record.

Q. Let us have your recollection on it, please?

A. It was March the 1st.

Q. How do you place that date?

A. Just like anybody else would. If you had gone through what I did, you would know then.

Q. Is that the only way that you place the date as March 1st, 1939 for us?

A. That is when it happened.

Q. As being the time of this conversation?

A. That is when it happened.

Q. Well, can you tell us what you did two weeks ago today, Mrs. Dunn?

A. If I think real clearly, I could. [2076]

Q. You are positive this was on March 1st?

A. Yes, sir.

Q. Of this year? Do I understand that at that

(Testimony of Margaret A. Dunn.)

time Mr. Glenn suggested to you that you retire from your position in view of your illness and these complaints that had been coming in?

A. No, sir.

Q. What did he say about that, if anything?

A. Well, what conversation?

Q. On March 1st.

Q. That is when he told me my work had been very satisfactory, he liked my work and he wanted me to be with him; I would have a job as long as I wanted it. I went right out in the outer room and told the other operators on duty Mr. Glenn's attitude about the whole situation.

Q. Why did you tell them his attitude? Had they been making remarks to you?

A. We talk everything over, just like anybody else would.

Q. You mean you and the other operators?

A. Yes.

Q. Had they been talking over these complaints that were being made about you?

A. I had told them about this petition.

Q. Oh, I understood you to say a few minutes ago, Mrs. Dunn, that in some conversation with Mr. Glenn that he suggested to you that in view of your illness and these complaints, and [2077] in view of the fact that your husband was working anyway, that you give up your position?

A. That was the second day.

Trial Examiner Lindsay: Just a moment, now.

(Testimony of Margaret A. Dunn.)

Mr. Clark: All right.

Trial Examiner Lindsay: Mr. Clark, she didn't say anything about "in view of these complaints, or her husband's working" as I recall her testimony.

Mr. Clark: I thought she did. She has answered it now, anyway.

Trial Examiner Lindsay: Well, that is the bad part of putting those things in the question.

Will you read that question back?

(The record referred to was read by the reporter, as set forth above.)

Trial Examiner Lindsay: By that answer, Mrs. Dunn, do you mean that you were told by Mr. Glenn that complaints were made against you?

The Witness: That was the day he asked me to resign.

Trial Examiner Lindsay: Well, did he tell you about the complaints being made against you?

The Witness: He said that there had been complaints made about the service.

Trial Examiner Lindsay: Did he say anything to you at that time about your husband working? [2078]

The Witness: Yes.

Q. (By Mr. Clark) What did he say in that respect, please?

A. He said that my husband was a good man, and I ought to stay home and keep house for him.

Q. I see.

(Testimony of Margaret A. Dunn.)

Now, during that conversation, did Mr. Glenn make any remark to you about your keeping liquor in the office?

Mr. Mouritsen: May I have——

Mr. Clark: (Interrupting) Well, she fixed it as the second conversation. I don't know when it happened. I wasn't there.

Q. Can you fix the date of the second conversation for us that you are now telling us about?

A. (Pause.)

Trial Examiner Lindsay: Just take your time, Mrs. Dunn.

Q. (By Mr. Clark) Just approximately.

A. (Pause.) Well, I had it all clear this morning. I don't know whether I can remember or not. I know it was the second conversation when he called me back in the office. It was—wait a minute—it was March the 1st because that was the day—it was March 2nd he called me up and told me he didn't want me to come back to work.

Q. Mrs. Dunn, how long was it before you took the stand this morning that you last talked to anyone concerning your testimony in this case? [2079]

Mr. Mouritsen: Objected to as immaterial.

Mr. Clark: Submit it.

The Witness: What was that question?

Trial Examiner Lindsay: She may answer.

The Witness: What was the question?

Mr. Clark: It will be read back to you.

(The record referred to was read by the reporter, as set forth above.)

(Testimony of Margaret A. Dunn.)

The Witness: Well, I don't know.

Q. (By Mr. Clark) Well, you have, of course, gone over your testimony which you gave this morning with Mr. Mouritsen, haven't you? A. Yes.

Q. And with Mr. McTernan, I take it, also?

A. Yes. Not with Mr. Mouritsen. I object to that. I did not with Mr. Mouritsen. I did with Mr. McTernan.

Q. Just with Mr. McTernan? All right.

Now, when was the last time you talked to Mr. McTernan about your testimony?

A. Last evening.

Q. Yes, last night, wasn't it? A. Yes.

Q. And all these things were fresh in your mind when you took the stand this morning, is that right?

A. They are fresh in my mind all the time. [2080]

Q. Now, too? A. Yes.

Q. All right.

Now, when was the date of this conversation you call the second conversation at which Mr. Glenn told you about the complaints which were being made, and mentioned your husband having a job, and that you ought to stay home and keep house for him?

Trial Examiner Lindsay: It is already in the record. It was March the first.

Mr. Clark: I wonder whether it was March the first.

Trial Examiner Lindsay: Read the record.

(Testimony of Margaret A. Dunn.)

Mr. Clark: Let us have the lady's testimony on it, if I may?

Trial Examiner Lindsay: May I have the record read, Mr. Reporter?

(The record referred to was read by the reporter, as set forth above.)

Mr. Clark: I want to know which it was, Mr. Examiner, March 1st or March 2nd.

Trial Examiner Lindsay: Now, then?

The Witness: March the first.

Q. (By Mr. Clark) It was March 1st? You are positive of that now, are you?

A. All right. [2081]

During that conversation on March 1st, did Mr. Glenn mention to you that the other operators complained of the smell of liquor in the office?

A. He did not.

Q. Was the subject of your keeping any liquor in the office of the Corcoran Telephone Exchange mentioned at all between you and Mr. Glenn on this occasion, namely March 1st of this year?

A. There was not.

Q. And was that subject mentioned between you and Mr. Glenn on any other occasion?

A. I had told Mr. Glenn that I had to take four glasses of Port wine a day for my health.

Q. Oh, I see. All right.

Now, when did you tell Mr. Glenn that?

A. Several months ago.

Q. And did you each and every day during the

(Testimony of Margaret A. Dunn.)

past year, while working at the Exchange, take four glasses of Port?

Mr. Mouritsen: I object to that as ambiguous. I mean, it is a double-meaning question, did she take them at the Exchange or while working at the Exchange.

Mr. Clark: I am asking while at the Exchange, yes.

The Witness: No, I did not.

Q. (By Mr. Clark) You did not? A. No.

Q. You didn't keep this bottle of Port at the office, then, [2082] I take it? A. I did not.

Q. Nor in the ice box of the office?

A. I did not.

Q. Well, now, will you tell us whether you took any of the four glasses of Port, which you have told us you were supposed to take each day, at the office of the Corcoran Telephone Exchange?

A. I did not.

Q. Are you positive of that? A. Positive.

Q. So that there couldn't be any smell of that through the office so far as anything you did is concerned?

Mr. Mouritsen: Objected to as incompetent, irrelevant and immaterial; already asked and answered.

Trial Examiner Lindsay: Sustained.

Mr. Clark: Very well.

Q. Now, what did you say to Mr. Glenn, please, Mrs. Dunn, when he suggested that you ought to

(Testimony of Margaret A. Dunn.)

stay home and keep house for your husband?

A. I told him that was a poor excuse.

Q. You said that was a poor excuse?

A. Yes.

Q. And do I understand that it was on March 1st of this year that you were discharged? [2083]

A. March 2nd.

Q. March 2nd.

Now, during your direct examination, you referred to a conversation which I think you said took place on April 13th of this year with Mr. Galusha.

Do you remember that?

A. Yes, sir.

Q. Did you have a conversation with Mr. Galusha on April 13th? A. I said——

Q. (Interrupting) Of this year?

A. I said about.

Q. About the 13th? A. Yes.

Q. And in that conversation did he report to you a conversation which he had had with Mr. Boyett? A. Yes, sir.

Q. All right.

Now, you have this incident in mind, don't you?

A. Yes.

Q. And then did you later have a conversation with Mr. Boyett on or about April 13th?

A. The next evening.

Q. The next evening. All right.

Did you ask Mr. Boyett to come to your house on that [2084] occasion? A. I did.

(Testimony of Margaret A. Dunn.)

Q. And he did, is that right? A. Yes.

Q. How long have you known Mr. Boyett?

A. Practically ever since I have been in Corcoran.

Q. How long is that, please?

A. Seventeen years.

Q. I see.

Now, will you please tell us, Mrs. Dunn, whether either in the conversation that you had with Mr. Galusha or in the conversation which you had directly with Mr. Boyett, Mr. Boyett said that he was going to do these various things to you and your family?

Mr. Mouritsen: Now, may I have that question read?

Mr. Clark: I cannot recall all the record, but it is something——

Trial Examiner Lindsay (Interrupting): May I have that question read?

(The record referred to was read by the reporter, as set forth above.)

Trial Examiner Lindsay: Do you understand the question?

Q. (By Mr. Clark) You remember the things you testified to? A. Yes, I do. [2085]

Q. Well, the thing I am after is this: Did Mr. Boyett tell you, or did Mr. Galusha say that Boyett had told him, that he, Boyett, was going to do those things? A. No, sir, he did not.

Q. As a matter of fact, Mr. Boyett had been a

(Testimony of Margaret A. Dunn.)

rather good friend to you over quite a period of years, hadn't he? A. In a business way.

Q. Well, in a business way.

And you had confidence in him?

A. I had.

Q. You understood on these occasions he was trying to help you, isn't that right?

A. Yes, sir.

Q. And so when you had your conversation with Mr. Galusha in which Mr. Galusha repeated what Boyett had said, and then you later asked Mr. Boyett to come to your house and had a conversation directly with him, you didn't mean to tell us that it was Boyett who threatened you in any way?

A. No, sir.

Q. All right.

In other words, Boyett told you, as I understand it, what certain people here in Corcoran might do, or what the rumors were to that effect, is that right? A. Yes, sir. [2086]

Q. And do I understand that Mr. Boyett stated to you, Mrs. Dunn, that he would attempt to use such influence as he had to get your job back?

A. Yes, sir.

Q. And you simply haven't heard from him in that regard, is that? A. Yes.

Mr. Clark: That is all.

May the record show, Mr. Examiner, that this cross examination is on behalf of the respondent Corcoran Telephone Exchange?

(Testimony of Margaret A. Dunn.)

Mr. McTernan: So stipulated.

Mr. Clark: Very well.

Mr. Mouritsen: Merely on behalf of the Exchange?

Mr. Clark: Yes, that is right. You said, "So stipulated."

Mr. McTernan: Do I understand that you do not intend to cross examine on behalf of the others?

Mr. Clark: No, that is all the cross examination. I am going to rely on the objections so far as the other respondents are concerned.

Mr. Mouritsen: That is satisfactory with that understanding.

Mr. Clark: Very well. [2087]

Redirect Examination

Q. (By Mr. McTernan) Mrs. Dunn, what was your salary while you last worked for the Exchange?

Mr. Clark: May I have that read back?

(The record referred to was read by the reporter, as set forth above.)

The Witness: \$18 a week.

Q. (By Mr. McTernan) And how long had you been earning \$18 a week?

A. I would have to go back over the records. I haven't any idea. It was cut at certain times and increased.

Q. But for some period before March 1st, 1939, you had been earning \$18 a week? A. Yes.

(Testimony of Margaret A. Dunn.)

Q. Mrs. Dunn, isn't it a fact that when a call is put through the Corcoran Telephone Exchange that it is necessary for the operator to break into the call in order to determine whether or not the call has been completed by the two parties?

A. It is.

Q. Is that true of all business calls?

A. Absolutely.

Q. Is there any equipment at the exchange so that there is any light flashing as a signal, or any sort of a signal, which would indicate when a telephone conversation is ended?

A. There is not. [2088]

Q. And how old are you, Mrs. Dunn?

A. 46.

Q. Since March 1st, 1939, have you been employed at all?

A. No, sir.

Q. Have you earned any money——

A. (Interrupting) What day?

Q. March 1st, 1939, or March 2nd, 1939.

A. No, I have not.

Q. Have you earned any money at all?

A. No, sir.

Q. If the National Labor Relations Board should reinstate you with back pay would you be willing to accept employment with the Corcoran Telephone Exchange?

A. I would.

Mr. McTernan: That is all.

Recross Examination

Q. (By Mr. Clark) Well, Mrs. Dunn, your

(Testimony of Margaret A. Dunn.)

husband has supported you since March 1st of this year, hasn't he?

Mr. Mouritsen: Objected to as incompetent, irrelevant and immaterial.

Mr. Clark: I will submit it.

Trial Examiner Lindsay: Sustained.

Mr. Clark: Very well. Just one further question.

Q. Mrs. Dunn, you will notice that this charge which we have discussed and which is dated March 13, 1939, or that is [2089] notarized by Mr. Galusha on that day, is on a printed form which is headed "Before the National Labor Relations Board" and has a place for the heading and then the printed word "Charge."

Will you please tell us where you got that form?

A. They sent it to me.

Q. And by "they," whom do you mean?

A. The National Labor Relations Board from San Francisco.

Q. From the Twentieth Region in San Francisco? Had you written them prior to that time for a form? A. Not for a form, just my case.

Q. I see.

And was that at someone's suggestion that you wrote them?

A. No, sir.

Mr. Clark: I see.

Have you gentlemen the letter which Mrs. Dunn first wrote to the Regional Director for the Twentieth Region?

(Testimony of Margaret A. Dunn.)

Mr. Mouritsen: Yes, we have the letter.

Mr. Clark: May I see it?

Mr. Mouritsen: Yes.

(The document referred to was passed to Mr. Clark.)

Mr. Mouritsen: Let the record show we are passing to Mr. Clark a Government document.

Mr. Clark: Yes, surely.

Mr. Examiner, I would like that in the record, but I [2090] don't want to destroy my objection by making the offer.

Will you offer it, Mr. Mouritsen? It will come in under my general objection. You might as well complete the correspondence on it as you have got other letters in there between the Director and Mrs. Dunn. I simply don't want to offer it, you see, because it would bind me.

Mr. Mouritsen: If you want it in the record, if you want to complete the record in that regard, you can offer it or read it into the record. We have no objection.

Mr. Clark: I don't want to offer it for the reasons I have stated. I do not want to destroy my objection. I don't think it adds anything anyway.

Trial Examiner Lindsay: Proceed.

Mr. Clark: That is all.

Mr. McTernan: That is all.

Trial Examiner Lindsay: That is all.

(Witness excused.)

Mr. McTernan: Mr. Dunn.

JOHN ERNEST DUNN

called as a witness by and on behalf of the National Labor Relations Board, having been first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. McTernan) Will you state your full name, please? [2091]

A. John Ernest Dunn.

Q. Your address?

A. 1310 Jepson Avenue, Corcoran, California.

Q. Are you here under subpoena, Mr. Dunn?

A. Beg pardon?

Q. Are you here under subpoena? A. Yes.

Q. What is your business or occupation?

A. Foreman machinist for the California Company, pipeline department, subsidiary of the Standard Oil Company of California.

Q. You are the husband of Mrs. Margaret A. Dunn? A. I am.

Q. Now, on or about March 1st, 1939, will you tell me whether or not you had a conversation with Mr. Glenn of the Telephone Exchange?

A. I did on the evening of March 1st.

Q. Where was that conversation held?

A. In his office behind the bank building in Corcoran.

Q. Was anyone else present?

A. Dick Harp was in the room and Gene Nunhof was in the room.

Q. Were they within hearing distance?

(Testimony of John Ernest Dunn.)

A. I don't think so.

Q. Will you tell us what you said to Mr. Glenn and what Mr. [2092] Mr. Glenn said to you on that occasion?

Mr. Clark: Objected to as hearsay and incompetent, irrelevant and immaterial so far as the respondents Associated Farmers of Kings County and J. G. Boswell Company are concerned.

And I understand that Mr. Glenn is the Mr. Glenn who testified here this morning?

Mr. McTernan: I think I added in my question, "Mr. Glenn of the Telephone Exchange."

Trial Examiner Lindsay: Yes. There is no doubt about that. Proceed. He may answer.

The Witness: What is the question now?

Trial Examiner Lindsay: Read the question, Mr. Reporter.

(The record referred to was read by the reporter, as set forth above.)

The Witness: I asked Mr. Glenn what he had against my family and he started right in saying, "You know there has been trouble, labor trouble at the Boswell gin."

And I said, "Well, Mr. Glenn, I was under the impression that this trouble was all over. I haven't heard anything about it in about two or three weeks and, therefore, I considered it was closed."

Mr. Glenn said, "Oh no, it is not closed. It is getting worse." [2093]

(Testimony of John Ernest Dunn.)

And then he started in giving me a history of the labor trouble.

Mr. Clark: I move, may it please your Honor, that that go out as not responsive.

Trial Examiner Lindsay: Yes. Tell what he said.

Mr. Clark: Let us have what he said.

The Witness: I can't remember his whole conversation. He talked for several—you might say for several minutes on the subject. He said——

Trial Examiner Lindsay (Interrupting): Give it as near as you can remember, in substance.

The Witness: Well, he said, "You know that this labor trouble is not directed against the Boswell Company primarily."

He says, "It is aimed at the farmers."

He said——

Mr. Clark (Interrupting): May it be stipulated that my objection runs to this entire line of testimony?

Mr. McTernan: So stipulated.

Trial Examiner Lindsay: Proceed.

The Witness: He said that the union—he didn't specify which union or any union—he said, "The union has been trying to organize farm labor in this district for some months. They have not been able to do so and that they figure now the best way they can get at this question is to organize the Boswell Company and their employees in turn will refuse to [2094] handle the farm products that are produced under non-union conditions."

(Testimony of John Ernest Dunn.)

That is all I remember definitely he said, but he talked for quite a little while on this line.

Q. (By Mr. McTernan) That is all you remember he said about the labor trouble at the Boswell plant? A. Well, yes.

Q. What did you or he say after that?

A. I interrupted him right there and said, "Mr. Glenn, I am not interested in all that. I came down here to ask you why you have discharged my wife."

And he threw up his hands. He said, "Wait a minute. This all ties in together." That is just exactly what he said.

He said, "You know your two daughters were seen down at the Boswell gin talking to the pickets."

I said, "No, I didn't understand that, Mr. Glenn. I understood they were down there talking to Mr. Prior."

And I said, "Also my wife, I believe, explained to you how they happened to be down there."

He said, "Oh yes, she explained it."

And I said—(Pause)—I don't seem to recall the exact words right there—anyway, he said—I said to him, "Well then, Mr. Glenn—" no, wait a minute. I will correct that. [2095]

He did say, "Well, your daughters were seen talking to the pickets at the gin," and he said, "Those who saw them have become very angry."

And he said, "They have told me that your daughters are carrying messages from your wife to the pickets."

(Testimony of John Ernest Dunn.)

I said, "Mr. Glenn, don't you think it would be rather foolish for my daughters, if they had such messages, to deliver, to come down right under the noses of the persons most concerned, to deliver such messages."

He said, "Oh, I don't know about that."

I said, "Well then, Mr. Glenn, in other words, pressure is being brought to bear on you to discharge my wife because my daughters were seen talking to the pickets?"

He said, "Yes, there is," and he says, "They are threatening to ruin my business if I don't do so."

I then said, "Well, Mr. Glenn, you know and I know that they cannot hurt your telephone business. As far as your farm interests are concerned, I don't know anything about how you are tied up."

He then said, "Well, I don't know what to do about the whole thing."

I agreed with him, that I didn't know what to do about it. He didn't seem to be inclined to say anything more.

Mr. Clark: I move that that go out, Mr. Examiner.

Q. (By Mr. McTernan) At that point the conversation ended? [2096]

A. That wound up the conversation.

Trial Examiner Lindsay: Yes. That one part may go out, "He did not seem to be inclined."

Q. (By Mr. McTernan) Well, did you have any other conversations with Mr. Glenn about this matter? A. I did the next morning.

(Testimony of John Ernest Dunn.)

Q. Where was that held?

A. In his automobile.

Q. Where was the automobile parked?

A. It was not parked. He picked me up in front of his office and drove up by the San Joaquin Cotton Gin and back again.

Q. Just you and Mr. Glenn in the car?

A. That is all.

Q. And what time of day was it?

A. Why, it was probably between 8:00 and 9:00 o'clock, around 9:00 o'clock, I would say.

Q. Will you tell us what he said to you and what you said to him on that occasion?

Mr. Clark: Same objection, Mr. Examiner, upon the ground that this is hearsay and incompetent, irrelevant and immaterial to the respondents Associated Farmers of Kings County and the J. G. Boswell Company. I will ask that that stipulation run, or rather that the objection be stipulated to run to this entire conversation. [2097]

Mr. McTernan: So stipulated.

Mr. Clark: Very well.

Trial Examiner Lindsay: Now, will you read the question?

(The record referred to was read by the reporter, as set forth above.)

The Witness: Yes. He said he had sent for me because he wanted to correct an impression that he knew I had the evening before, it being that I thought that the Boswell people were bringing pres-

(Testimony of John Ernest Dunn.)

sure to bear on him to discharge my wife. He wanted to let me know that was not so, that he was discharging my wife for her own good, that she was getting along in years, and was nervous and high strung, and he didn't think on account of her health she ought to be working down there. [2098]

Q. And what did you say to that?

A. I said, "Well, Mr. Glenn, then this petition that has been circulated has had nothing to do with this case."

He said, "There has been no petition circulated. That is all out. There is nothing of that kind in it at all."

I said, "Well, Mr. Glenn, there are several friends of ours have told us that this petition was circulated and now you are either badly mistaken or our several friends are damn liars."

Q. Was anything else said? A. Oh, yes.

He then said—oh, I don't know the exact order, of course, but the statements were made—he said, "Nine men did come to see me about ten days ago and demanded that I discharge your wife."

And he spoke as if these nine men had come in a body.

Mr. Clark: I move that that go out, Mr. Examiner, namely, this witness speaking as if nine men had come in in a body. If they said anything in that regard, I assume that comes in subject to the objection, but I object to this and move to strike it on the ground that it is a conclusion of the wit-

(Testimony of John Ernest Dunn.)

ness. It is an improper manner of relating a conversation.

Trial Examiner Lindsay: Just tell what he said. If he said they came in a body, all right. If he didn't, then the other may go out. [2099]

The Witness: No. He said, "Nine men came to see me ten days ago, approximately ten days ago." And he said, "I laughed at them, and a couple of days ago three of these same men came to me again, met me on the street corner, and demanded that I do something about this."

He, Mr. Glenn, then stated that "Your wife has been having trouble with the operators."

He said, "I went into the Exchange the other day and I met your wife coming out of the door. She was half crying. I went on in, and Lillian Fowler was crying at the board."

And he said, "I just can't stand that stuff."

And I then said, "Well, Mr. Glenn, do you know why they were crying?"

I said, "The idea is that there is no one running this Exchange. You are not taking care of it. You tell my wife she is running it, and you tell Mrs. Woodruff that she is running it, and I suppose you tell Lillian the same thing." I said, "No one can run any business under those conditions." And that wound up the conversation the second day.

Q. (By Mr. McTernan) He didn't make any answer to that statement? A. No.

Mr. McTernan: You may inquire.

(Testimony of John Ernest Dunn.)

Cross Examination

Q. (By Mr. Clark) What did you say your position was, Mr. [2100] Dunn?

A. Machinist Foreman.

Q. For the Standard Oil?

A. Well, it is a subsidiary of the Standard Oil Company.

Q. What is the name?

A. California Company.

Q. Where is your work? In Corcoran?

A. No, sir.

Q. Where?

A. On the pipe line extending from Bakersfield to Sterile Bay and from Taft to Kettleman.

Q. Do I understand that you do not live continuously in Corcoran?

A. My home is in Corcoran. I travel up and down the pipe line, and I come home whenever I have an opportunity.

Q. I see.

Now, you have talked your testimony over in this case, over with Mr. McTernan, haven't you?

A. I gave him an outline of what I was going to testify to.

Q. And when was the first time you did that?

A. (Pause.)

Q. If you remember?

A. Well, I don't remember. Approximately three weeks ago, I would say.

Q. All right. [2101]

(Testimony of John Ernest Dunn.)

And have you talked to him since then?

A. Last night.

Q. And last night you went over these conversations you have related to us today, is that true?

A. That is right.

Q. And who else was present when you did that?

A. My wife and my daughter, Margaret.

Q. I see.

Did they take part in the conversation?

A. Well, he was just reviewing the whole testimony as he came to it, and it was more or less of an intimate conversation with all of us.

Q. And by "he," you mean Mr. McTernan?

A. I mean Mr. McTernan.

Q. He told you about the other facts that have been testified to in the case, or some of them?

A. Not that I know of. I just went over my wife's testimony and mine. I do not know that Mr. McTernan told me about any other testimony.

Q. I see.

What was your purpose in—strike that.

Directing your attention to this first conversation which you tell us that you had with Mr. Glenn, can you fix the date for us again, approximately?

A. March 1st. [2102]

Q. March 1st? A. Yes.

Q. Of this year? A. Yes, 1939.

Q. All right.

Will you tell us whether Mr. Glenn sought you out or you sought him out?

(Testimony of John Ernest Dunn.)

A. I sought Mr. Glenn.

Q. You were about to say you hunted Mr. Glenn?

A. I did hunt him.

Q. I see.

What was your purpose of hunting Mr. Glenn up?

A. I got home in the evening and found my wife crying. She was practically in hysterics, and I tried to find out what was the matter and she wasn't feeling in any condition to tell me. She said Mr. Glenn had asked her to resign.

I said, "O. K. I am going to find Mr. Glenn and find out what it is all about."

Q. Is it a fair statement to say that you went to Mr. Glenn in an attempt to get your wife's job back?

A. I did not. I went there to get the particulars of the case.

Q. I see.

And then the following morning I believe that you told us there was mentioned in the conversation you had with Mr. Glenn [2103] the fact that some friends of yours had said that a petition had been circulated?

A. Yes.

Q. Do you remember that?

A. Yes.

Q. Now, to whom did you refer when you used the word "friends?"

A. Well, I got these from my wife, so if you want me to tell you what she said, O. K.

Q. I want to know the names of the people she referred to?

A. I got the names from her.

(Testimony of John Ernest Dunn.)

Q. Who told you that a petition was being circulated?

A. First, Mrs. Botts, Mrs. Harold Botts, I believe the name is, and Roy Filcher. That is all I can remember now.

Q. All right.

Are those the people whom you referred to as friends of yours and your wife's who had told you that a petition was being circulated?

A. Yes.

Q. That is right? A. That is right.

Q. As a matter of fact, has Mr. Filcher been a friend of your wife's and yours?

A. Only—no. He was only an acquaintance of mine and only came in contact with my wife in a business way with the Exchange. [2104]

Q. You were referring to him when you spoke of him as a friend? A. Yes.

Q. How about Mrs. Botts? Has she been a friend of your wife's?

A. I don't know. She is an acquaintance also. In these small towns, we call all acquaintances friends.

Mr. Clark: I see. That is all.

There is one further question, if I may ask it, Mr. Examiner.

Q. To your knowledge, Mr. Dunn, has your wife ever become a member of a labor organization?

A. I am positive she has not.

Q. All right.

And so far as you know, has she ever assisted any labor organization in any manner?

(Testimony of John Ernest Dunn.)

A. (Shaking head negatively.)

Mr. Mouritsen: Objected to as incompetent, irrelevant and immaterial.

Mr. Clark: May it please your Honor, if I may make a statement, that question goes directly to the jurisdiction of the Board in a matter such as this. In other words, the objection that I made at the opening of this hearing, so far as the Dunn charge was concerned, or is concerned, as your Honor will remember, was that there is no charge on file except [2105] through Mr. Prior and that there is nothing alleged in the complaint which is within the prohibition of the Act.

Now, if we take the provision of the Act——

Trial Examiner Lindsay: Are you going to argue the whole matter now, or just make your objection?

Mr. Clark: No, I am not going to argue anything except my objection—or rather, it is not my objection. It is the admissibility of the question. It is counsel's objection.

I am making the statement in support of the question.

Trial Examiner Lindsay: Yes. I understand.

Mr. Clark: May I have the question read back?

Trial Examiner Lindsay: Yes. Read the question.

(The question referred to was read by the reporter, as set forth above.)

Mr. Clark: I ask the question.

(Testimony of John Ernest Dunn.)

Trial Examiner Lindsay: Sustained.

Q. (By Mr. Clark) And so far as you know, Mr. Dunn, has your wife ever attempted to assist any labor organization in any manner?

A. No.

Q. Your answer is No? A. No.

Mr. Clark: That is all, from us.

I would like to recall Mrs. Dunn for the purpose of asking those two questions, if I may. [2106]

Trial Examiner Lindsay: Mrs. Dunn is here, is she?

You are excused.

(Witness excused.)

Trial Examiner Lindsay: All right. Let's have Mrs. Dunn.

Mr. Mouritsen: Now, this is—he is calling Mrs. Dunn as his own witness.

Mr. Clark: No, I am not. I am asking permission—let's not quibble about a thing like that—I am asking permission to ask three more questions of this witness on cross examination. That is all.

Trial Examiner Lindsay: I called her back at your request.

Mr. Clark: I want the record to show she is my witness.

Trial Examiner Lindsay: I said you called her back as your witness, is that correct or not?

Mr. Clark: May I have a clear understanding that this is further cross examination?

Trial Examiner Lindsay: You can call it anything you want to, Mr. Clark.

Mr. Clark: Very well. I ask to continue my cross examination.

MRS. MARGARET A. DUNN,

recalled to the stand by and on behalf of the National Labor Relations Board, having been previously duly sworn, was further [2107] examined and testified as follows:

Cross Examination

(Continued)

Q. (By Mr. Clark) Mrs. Dunn, will you tell us whether or not you have ever become a member of any labor organization?

A. I have not. [2108]

Q. And particularly are you not a member of any labor organization with which Mr. Prior is connected, isn't that right?

A. Absolutely not.

Q. All right.

Now, have you ever in any manner assisted any such labor organization? A. I have——

Mr. Mouritsen (Interrupting): I object unless limited to the organization in question.

Mr. Clark: That is right.

Your answer?

The Witness: I have not.

Q. (By Mr. Clark) Or have you in any man-

(Testimony of Mrs. Margaret A. Dunn.)

ner attempted to assist any of the organizations that have been mentioned in this case?

A. I have not.

Mr. Clark: That is all.

Trial Examiner Lindsay: Any other questions?

Mr. Mouritsen: No further questions.

Mr. McTernan: No further questions.

(Witness excused.)

Mr. Mouritsen: May we have a moment, Mr. Examiner?

Trial Examiner Lindsay: Yes. [2109]

Mr. Mouritsen: Mr. Examiner, we have yet to call only one witness, Mr. Louis T. Robinson, with reference to the correspondence and the answer to the subpoena duces tecum, and I imagine that it will take only half or three-quarters of an hour for the Board to complete its case in this matter.

I think that perhaps we could save more time or could complete that more quickly if Mr. Robinson has this evening to assemble that correspondence and we can then produce it in the morning. I also want to summarize some of the information in Board's Exhibit 3 in order that it may be withdrawn; and I suggest at this time that perhaps it would be appropriate to adjourn.

Mr. Clark: In that connection, Mr. Examiner, then, may I ask that we adjourn until 2:00 o'clock tomorrow afternoon, because we will need a little

time to decide upon such witnesses as we intend to call in defense; and I think that by taking tomorrow morning off, we will probably save ourselves a lot of repetition in properly organizing our case.

Mr. Mouritsen: The Board has no objection.

Trial Examiner Lindsay: Will that be long enough, Mr. Clark, until 2:00 o'clock?

Mr. Clark: I would rather have all day tomorrow, and so long as it is only going to take a half or three-quarters of an hour for the examination of Mr. Robinson, it would, of course, be much better so far as we are concerned to have the [2110] matter go over until Friday morning at 9:30, and then have Mr. Robinson take the stand. We make our return to the subpoena, the Board rests, and we go right on with our case.

Trial Examiner Lindsay: Then there will be no further necessity of further delay?

Mr. Clark: Absolutely not.

Trial Examiner Lindsay: The request is granted, and we will adjourn until Friday morning at 10:00 o'clock.

(Whereupon, at 1:45 o'clock p. m., an adjournment was taken until Friday, June 9, 1939, at 10:00 o'clock a. m.) [2111]

American Legion Hall

Corcoran, California

Friday, June 9, 1939.

10:00 o'clock a. m. [2112]

PROCEEDINGS

Trial Examiner Lindsay: Hearing called to order.

Mr. Clark: Respondents are ready, Mr. Examiner.

Mr. Mouritsen: Ready for the Board, Mr. Examiner.

Mr. Robinson.

LOUIS T. ROBINSON,

recalled to the stand by and on behalf of the National Labor Relations Board, having been previously duly sworn, was further examined and testified as follows:

Direct Examination

Q. (By Mr. Mouritsen) Mr. Robinson, you were requested in a subpoena duces tecum directed to yourself to furnish certain correspondence relative to the matters here under investigation, and subsequently I furnished to your counsel a list, a more detailed list relative to correspondence that we desired.

Have you at this time produced the correspondence called for under the subpoena as specified and given in more detail in the list furnished your

(Testimony of Louis T. Robinson.)

counsel? A. Yes, I have.

Trial Examiner Lindsay: Off the record.

(Discussion outside the record.)

Trial Examiner Lindsay: On the record.

Q. (By Mr. Mouritsen) You are Mr. Louis T., or L. T. Robinson, is that correct?

A. Yes, sir. [2114]

Q. I believe you identified yourself as being in charge of all operations of the Boswell Company in the San Joaquin Valley, is that correct?

A. Yes, sir, that is correct.

Q. And does that carry any title or designation, that is, the type of work that you do, the functions that you perform for the Boswell Company?

A. General Manager for the San Joaquin Valley.

Q. Now, could we have that correspondence that you have produced, Mr. Robinson?

A. Mr. Clark has it.

Mr. Clark: Mr. Examiner, in making the return to the subpoena No. 12153, served upon J. G. Boswell Company and Louis T. Robinson, superintendent, Corcoran, California, some time subsequent to May 6th, 1939, that being the date of the Subpoena, I first would like to call attention to the calls 3, 4, 5 and 6 of that subpoena.

First let me state for the record that as to calls 1 and 2 of the subpoena, the Company, that is the Boswell Company, has, as I understand it, com-

(Testimony of Louis T. Robinson.)

pletely responded to those by furnishing the Social Security record of its employees in the Corcoran plant, and also by furnishing counsel for the Board certain work data concerning specified employees agreed upon between Mr. McTernan and Mr. Wingrove.

May I have a statement, gentlemen, that the first and [2115] second calls of the subpoena have been fully complied with?

Mr. Mouritsen: I will state that we have accepted the calls 1 and 2.

Mr. Clark: That is all I want.

Now, with respect to call 7—before I get to 4, 5 and 6—which last mentioned call is for books and records and documents showing any and all financial contributions of J. G. Boswell Company during 1938 and '39 to the date of this subpoena to the Associated Farmers of California, Inc., Associated Farmers of Kings County, Inc., or to any other County unit of the Associated Farmers, I will direct the Examiner's attention to a stipulation entered into between Mr. Wingrove and counsel for the Board in which those amounts are set forth, and also a letter which I furnished counsel for the Board stating the contribution of J. G. Boswell Company to the State organization, part of which was credited to the Kings County assessment for the year 1938.

Now, when Mr. Walsh was here, I further engaged with counsel for the Board to furnish the

(Testimony of Louis T. Robinson.)

exact figures concerning any further contributions by J. G. Boswell Company to the Associated Farmers of California or Kings County, that is, any contribution during the present year, and so in compliance of in fulfilment of that engagement, I would like to state that on or about March 21st of 1939 a check for \$240.42 was forwarded by J. G. Boswell Company to the Associated Farmers of [2116] California.

Trial Examiner Lindsay: What is the amount of that, please?

Mr. Clark: \$240.42, which check is mentioned in the stipulation to which I referred, but the additional data I want to call attention to is that of that check, the amount of \$91.29 was forwarded by Boswell for the account of the Tulare County unit of the Associated Farmers, being 11½ cents a bale on 6,086 bales of cotton ginned, and of that sum \$240.42, the sum of \$149.13 was forwarded by Boswell Company to the State organization for the account of the Associated Farmers of Kings County, Inc., being 11½ cents on 9,942 bales, those being the specific figures I promised Mr. Walsh we would obtain for him.

Now, in that connection, Mr. Robinson, I will direct your attention to what purports to be a copy of a letter addressed to the Associated Farmers of California under date of March 21st, 1939, and particularly I want to direct your attention to the figures 9,942 in that letter, opposite the words "Kings County."

(Testimony of Louis T. Robinson.)

Will you please tell me whether I am correct in stating that that indicates the number of bales of cotton ginned at the Corcoran plant during the ginning season of 1938-39?

The Witness: That is correct. [2117]

Mr. Clark: That is 9,942 bales?

The Witness: That is correct.

Mr. Clark: And the figure \$149.13 is the result of 11½ cents a bale which was forwarded to the State organization for the credit of the Kings County unit of the Associated Farmers?

The Witness: That is correct.

Mr. Clark: Have there been any further contributions besides this?

The Witness: None that I know of.

Mr. Clark: So I will ask counsel for the Board to accept the showing thus far made in the record, Mr. Examiner, as a compliance with call No. 7 of the subpoena.

Mr. Mouritsen: Yes, that is acceptable.

Mr. Clark: All right.

Now, with respect to calls 3, 4, 5 and 6, I may state, Mr. Examiner, that they are simply general requests for all correspondence et cetera received at the Corcoran plant during the years 1938 and 1939 relating to labor policy, labor relations and labor disputes of the Corcoran plant, the picketing of the Corcoran plant, and the boycott of the company's products with the American Federation of Labor and all similar correspondence on those sub-

(Testimony of Louis T. Robinson.)

jects sent out from the Corcoran plant; also all correspondence et cetera received at the Corcoran plant from the Associated Farmers of California or Associated Farmers of Kings County or any other of the units of the Associated Farmers for the years 1938 and [2118] 1939; and all correspondence et cetera sent out from the Corcoran plant with respect to those same subject matters.

And I would like it made part of the record if I can for the purpose of this showing Calls 4, 5—Calls 3, 4, 5, and 6 of subpoena No. 12153—may they be deemed read into the record?

Mr. Mouritsen: I have no objection. We can give them to the reporter and he can copy them into the record.

Mr. Clark: All right.

(The Calls referred to read as follows:

3. All correspondence, letters, telegrams and memoranda received at and for the Corcoran plant of J. G. Boswell Company during 1938 and 1939 to date of this subpoena, relating to labor policy, labor relations and labor disputes of the Corcoran plant, the picketing of the Corcoran plant and the boycott of the Company's products by the American Federation of Labor.

4. Copies of all correspondence, letters, telegrams and memoranda sent by and from the Corcoran plant of the J. G. Boswell Company during 1938 and 1939 to date of this subpoena, relating to

(Testimony of Louis T. Robinson.)

labor policy, labor relations and labor disputes of the Corcoran plant, the picketing of the Corcoran plant, and the boycott of the Company's products by the American Federation of Labor.

5. All correspondence, letters, telegrams and memoranda received at the Corcoran plant of J. G. Boswell Company from [2119] the Associated Farmers of California, Inc., the Associated Farmers of Kings County, Inc., or any other county unit of the Associated Farmers of California, Inc., during the year 1938 and 1939 to date of this subpoena.

6. Copies of all correspondence, letters, telegrams and memoranda sent by and from the Corcoran plant of J. G. Boswell Company to the Associated Farmers of California, Inc., Associated Farmers of Kings County, Inc., or to any other county unit of the Associated Farmers of California, Inc., during 1938 and 1939 to date of this subpoena.) [2119(a)]

Mr. Clark: Now, I will now offer into evidence with respect to this showing, Mr. Examiner, a copy of a memorandum furnished by Mr. Mouritsen during the hearing in which there appears some ten requests for correspondence on different subjects and which I will understand counsel will stipulate with me may be considered to have been included in the subpoena we are talking about instead of Calls 3, 4, 5, and 6, is that correct?

Mr. Mouritsen: Well, in further elucidation of Calls 3, 4, 5, and 6, instead of in place of.

(Testimony of Louis T. Robinson.)

Mr. Clark: All right. That is satisfactory.

But, in other words you and I are stipulating, Mr. Mouritsen, that the subpoena shall be treated just as though it had contained the ten specifications which appear in this memorandum I am now offering in evidence, is that correct?

Mr. Mouritsen: That is stipulated.

Mr. Clark: I will ask that that be marked in evidence as Respondent Boswell's next in order.

Mr. Mouritsen: No objection.

Trial Examiner Lindsay: Respondent Boswell's Exhibit 10 is received in evidence.

(Thereupon the document above referred to was received in evidence and marked Respondent Boswell's Exhibit No. 10.) [2120]

Mr. Clark: Responding, then, to the ten specific requests in the memorandum just received in evidence, I will make the following statement: As to Paragraph 1—first, let me state this: I want it understood that we are eliminating from this production or from the compliance with the requests, all correspondence between the Company and its attorneys, Messrs. Sidney Sharp and M. Wingrove respecting this matter, upon the ground that, of course, that is privileged, and so we are not producing that type of correspondence.

We are also eliminating, or rather we haven't considered and we are not producing, simply to save labor, all correspondence between the Company and/or its attorneys and the National Labor

(Testimony of Louis T. Robinson.)

Relations Board or any of its representatives, upon the theory that you people have the originals of all letters we have written, and you have the copies of all letters you have written us.

Mr. Mouritsen: That is right.

Mr. Clark: Those are the only exceptions, that is, the correspondence file between the Company and its attorneys and relating to legal advice, and such correspondence as has passed between the National Labor Relations Board or its agents, and the Company, or the Company's attorneys.

Trial Examiner Lindsay: Yes.

May I ask a question there to clarify the record?

Mr. Clark: Yes, sir. [2121]

Trial Examiner Lindsay: What do you mean by the statement "to save labor?"

Mr. Clark: Well, we could produce, Mr. Examiner, the entire file of correspondence between the National Labor Relations Board and its agents, and Boswell Company, and its attorneys, but instead of examining that correspondence as I went through it, wherever I found that, I simply went on to the next letter, you see?

Trial Examiner Lindsay: You meant by that you were saving labor for us and the Board?

Mr. Clark: That is right, because I am assuming the Board has access to all correspondence had with the Respondent.

Mr. Mouritsen: I will so stipulate.

Mr. Clark: All right.

(Testimony of Louis T. Robinson.)

Now, with those reservations, then, I will state for the record that as to call 1 of the memorandum just admitted in evidence, I find that no correspondence relative to the lay-offs of W. R. Johnston, Boyd Ely or Stephen Griffin—and I would like to ask Mr. Robinson that question, or have you ask him later.

Are you going to examine him later?

Mr. Mouritsen: I will accept counsel's statement.

Mr. Clark: Very well.

I will ask you, Mr. Robinson, whether or not you recollect or know of any correspondence between the Boswell Company or [2122] anyone on its behalf, relative to the lay-offs of W. R. Johnston, Boyd Ely or Stephen Griffin?

The Witness: I do not.

Mr. Clark: And you went through the correspondence with me yesterday, did you not?

The Witness: Yes, sir.

Mr. Clark: All right.

Now, answering call 2 of the memorandum, which is any and all correspondence as to the eviction of the Union members from the Corcoran plant on November 18th, 1938, I want the record to show that we at this time produce the original of a letter dated November 18th, 1938, addressed to J. G. Boswell Company, Los Angeles, California, attention Mr. J. G. Boswell, by J. G. Boswell Company, Louis T. Robinson.

(Testimony of Louis T. Robinson.)

Now, I have the copy. I have both the Los Angeles office file and the Corcoran file, so I will just keep the copy, Mr. Mouritsen. You don't want that?

Mr. Mouritsen: No, no; the original.

Mr. Clark: All right.

And also in response to Paragraph 2 of the memorandum just received in evidence, I will ask that the record show I now produce the original of an inter-office communication from Mr. J. G. Hammond to Mr. L. T. Robinson, bearing the signature J. G. Hammond and dated November 19th, 1938, both of those letters being relative to the matters of November 18th. [2123]

And beyond that, Mr. Examiner, we have nothing.

Do you want to examine those, or do you want me to go on?

Mr. Mouritsen: Continue.

Mr. Clark: All right.

With respect to Paragraph 3 of the memorandum just received in evidence, which is a request for any and all correspondence relative to the return to work of the employees laid off on November 15th and 17th, 1938, and the employees evicted from the plant on November 18th, 1938, I will state for the record that we have nothing except—if such construction can be given them—the following copies of letters sent to various employees by the J. G. Boswell Company, to which

(Testimony of Louis T. Robinson.)

are attached registered return receipts, that is, United States Mail return receipts; and I will state what these are and deliver them to counsel. [2124]

Mr. Mouritsen: Well, Mr. Clark, may I ask—do we not have a couple of extra ones of two of the originals?

Mr. Clark: You have a couple of two of the originals, but each is different, but if your interpretation of the third paragraph of the memorandum includes this type of correspondence, I want the record to show I am offering it to you.

There are 1, 2, 3, 4, 5, 6, 7 of these letters, and some of them are different than others. I think I will produce them and you can examine them. May I have them so I can identify them in the record?

(Thereupon the documents above referred to were passed to Mr. Clark.)

Mr. Clark: The letters just referred to, Mr. Examiner, are as follows: A letter dated November 28, 1938 from the J. G. Boswell Company to Mr. George Andrade, together with return receipts; a letter of the same date addressed to Mr. L. E. Ely by J. G. Boswell Company, together with a return receipt; a letter of the same date, to-wit: November 28, 1938, addressed to Mr. E. C. Powell, by J. G. Boswell Company, together with return receipt; a letter of the same date addressed to Mr. R. K. Martin by J. G. Boswell Company, together

(Testimony of Louis T. Robinson.)

with a return receipt; a letter dated December 6, 1938, addressed to Mr. H. M. Wingo by the J. G. Boswell Company, together with return receipt; a letter dated December 6, 1938, addressed to Mr. L. A. Spear by the J. G. Boswell Company, together with [2125] return receipt; and a letter which is dated December 6, 1938, addressed to Mr. O. L. Farr by J. G. Boswell Company, together with return receipt.

And may I ask you, Mr. Robinson, whether these are all letters of similar import, that is, written by the company to employees respecting the termination of employment which were written?

The Witness: Yes, they all are.

Mr. Clark: All right. And these documents I referred to as letters are the original copies of them, are they not?

The Witness: That is right.

Mr. Mouritsen: As to whether they are of similar import——

Mr. Clark (Interrupting): They are substantially—by that I mean they treat of the termination of those employments. The letters in substance I think are different in some respects.

Will you please tell us, Mr. Robinson, with respect to the second paragraph in response to which we have delivered your letter of November 18, 1938, to Colonel Boswell, and Mr. Gordon Hammond's interoffice communication on November 19th to you, whether or not these constitute all the let-

(Testimony of Louis T. Robinson.)

ters relative to the events of November 18, 1938, which were written.

The Witness: They do.

Mr. Clark: All right.

Mr. Mouritsen: The answer was "They do"? [2126]

Mr. Clark: "They do."

Now, answering paragraph 4 of the memorandum just received in evidence, which requests any and all correspondence relative to the formation of the J. G. Boswell Company Employees' Association of Corcoran and Tipton, had on or about November 18, 1938, and all correspondence relative to any dealings which the J. G. Boswell had subsequent to that time, I will produce on behalf of the Respondent Boswell two letters, both of which are originals, one dated November 29, 1938, addressed to J. G. Boswell Company by the J. G. Boswell Company Employees' Association, a copy of which I think has already been submitted to counsel, and another original letter dated April 15, 1939, addressed to J. G. Boswell Company by H. G. McKeever, Secretary, both of these being originals, and I think that that likewise has been submitted to counsel.

Now will you state, Mr. Robinson, whether or not except for the two letters which I have just produced and handed to the attorneys for the Board there was at any time any further correspondence with the Employees' Association or any of its members.

(Testimony of Louis T. Robinson.)

The Witness: There was no further correspondence.

Mr. Clark: With respect to paragraph 5 of the memorandum which calls for any and all correspondence relative to the National Labor Relations Board, and its investigation of the eviction of the employees on November 18, 1938, the lay-offs [2127] of November 15th and 17th, 1938, and the dispersal of the pickets on January 30, 1939, I will state for the record that there was no such correspondence, or that is, that I found no correspondence in the files which were submitted to me except correspondence between the attorneys for the company and the company, for which I have already claimed a privilege; and correspondence between the Board, that is, the National Labor Relations Board or its representatives or attorneys and the company, and by that I refer, Mr. Mouritsen, to those questionnaires which were sent out.

Now will you state, Mr. Robinson, whether that statement of mine is correct.

The Witness: That statement is correct, and I will further state that all of the correspondence of both offices were delivered to you.

Mr. Clark: I see. Well, let us have it this way, then: Will you tell us whether or not, except for such correspondence as may have passed between Mr. Sharp's office and the Boswell Company, or relating to legal advice, and such correspondence as passed between the National Labor Relations

(Testimony of Louis T. Robinson.)

Board or any of its representatives and the company, there was any correspondence, any other correspondence relative to the Board or its investigation or the purported lay-offs of these men or the dispersal of the pickets on January 30?

The Witness: There was no other correspondence. [2128]

Mr. Clark: All right.

Answering Paragraph 6 of the memorandum, which calls for any and all correspondence relative to the formation of Local 21798 and the membership had and exchanged during the month of November, 1938, I will state for the record that there was nothing of that nature except the letters already surrendered under the 2nd paragraph, that is, the letter of November 18th and November 19th.

Now, will you please tell us whether or not that is a correct statement, Mr. Robinson?

The Witness: That is correct.

Mr. Clark: All right.

Answering Paragraph 7, which calls for any and all correspondence relative to E. F. Prior of the American Federation of Labor, I would like the record to show that we at this time produce the original and original copy of a letter dated November 25th, 1938, written to J. G. Boswell Company, Corcoran, California, attention of Mr. L. T. Robinson and G. L. Hammond, by Fred G. Sherrill, Treasurer of the J. G. Boswell Company, with

(Testimony of Louis T. Robinson.)

which was apparently enclosed—because I found it next in order in the file—Mr. Prior's card which reads "California State Council Soap and Edible Oil Workers, E. F. Prior, Secretary and Treasurer," with his address, and I will produce those two documents at this time, and I am showing you the copy, Mr. Mouritsen, I presume which I may keep. [2129]

Mr. Mouritsen: What do you mean by "original copy?"

Mr. Clark: It is a carbon copy from Los Angeles. I have had both files, the Los Angeles and Corcoran. In other words, it is not a copy that was made of the letter later, but it is the original carbon.

Now, will you please tell us, Mr. Robinson, whether I am correct in stating that the letter of November 25, 1938, from Mr. Sherrill to the Corcoran plant of the Boswell Company to your attention and that of Mr. Gordon Hammond's, together with Mr. Prior's card, constitutes all correspondence relative to Mr. Prior—well, that is all—relative to Mr. Prior?

The Witness: That is correct.

Mr. Clark: Yes.

Answering Paragraph 8, which calls for any and all correspondence with the Associated Farmers of Kings County, Inc., relative to the dispersal of pickets at the plant on January 30th, 1939, I will ask you whether there was any such correspondence?

(Testimony of Louis T. Robinson.)

The Witness: There was not.

Mr. Clark: I will state for the record that I found none, Mr. Examiner.

Answering Paragraph 9, which requests any and all correspondence relative to the boycott of the Company's products instituted by the A. F. of L. on November 20th, 1938, I will ask you to state whether there was any such correspondence? [2130]

The Witness: There was not.

Mr. Clark: I will state for the record that I found none in the files, Mr. Examiner.

Answering Paragraph 10 of the memorandum, which calls for any and all correspondence relative to the picketing of the Company's Corcoran plant instituted by the A. F. of L. on or about January 23rd, 1939, I will ask you to state whether or not there was any such correspondence?

The Witness: There was not.

Mr. Clark: I will state for the record, Mr. Examiner, I found no such correspondence, and that both Mr. Robinson and Col. J. G. Boswell have advised me that every file in any way pertaining to this matter was submitted to me for inspection.

I will also state I have gone through those files completely, except for the correspondence between the Board and the Company, or any of the Board's agents and the Company, and between the attorneys for the Company and the Company, relating to legal advice—I read it all, but I didn't bother to read that.

(Testimony of Louis T. Robinson.)

That finishes our showing.

Mr. Mouritsen: I suppose you have no objection to offering them?

Mr. Clark: Let us mark them all for identification first, if you will.

Let the record show that Mr. Mouritsen is returning to me [2131] the seven letters to the employees dated November 28th and December 2nd, 1938.

Mr. Mouritsen, I have a further document here which you may be interested in, or rather, there are three of them, and which I didn't find responsive to any of the calls—that is, exactly responsive—and I will state it consists of the original draft of the notice which was posted on the Company plant some time immediately after November 18th, which original draft I think is in Mr. Larson's handwriting, and then there is the final draft of that notice approved by Mr. Larson of the National Labor Relations Board.

If you want that for any purpose, there it is.

(The documents referred to were passed to Mr. Mouritsen.)

Mr. Clark: If you want to question Mr. Robinson on it, or use it for any purpose, you may.

Mr. Mouritsen: I will consider it. I understand that that notice hasn't been properly identified or no foundation has been laid.

Mr. Clark: I am not making any statement for the record. I am just telling you that we have it, is all.

(Testimony of Louis T. Robinson.)

Mr. Mouritsen: May the letter produced by counsel in response to the subpoena, which is dated November 18th, 1938, and addressed to J. G. Boswell Company, Los Angeles, California, attention Mr. J. G. Boswell, and which is signed in the name of the J. G. Boswell Company by Louis T. Robinson, be marked [2132] Board's Exhibit next in order?

Mr. Clark: Is it being offered?

Trial Examiner Lindsay: Just being marked.

(Thereupon, the document above referred to was marked as Board's Exhibit No. 24 for identification.) [2133]

Mr. Mouritsen: At this time, Mr. Examiner, may the document produced by counsel in response to the subpoena dated December 19, 1938, and purports to be a memoranda to Mr. L. T. Robinson from Mr. G. L. Hammond, which appears to be signed by G. L. Hammond, be marked Board's 25 for identification?

(Thereupon the document above referred to was received and marked as Board's Exhibit No. 25 for identification.)

Mr. Mouritsen: May the letter dated November 25, 1938, addressed to J. G. Boswell Company, Corcoran, California, and signed by Fred G. Sherrill, and to which is attached a card of Mr. E. F. Prior, be marked Board's 26 for identification, as one exhibit, the card and the letter?

(Testimony of Louis T. Robinson.)

(Thereupon the documents above referred to were received and marked as Board's Exhibit No. 26 for identification.)

Mr. Mouritsen: May the letter produced by counsel in response to the subpoena, dated November 29, 1938, addressed to J. G. Boswell Company, 354 South Spring Street, Los Angeles, California, and signed by J. G. Boswell Company Employees' Association, by J. W. Hubbard, president, and E. M. Roberson, secretary, be marked Board's 27 for identification?

(Thereupon the document above referred to was received and marked as Board's Exhibit No. 27 for identification.)

Mr. Mouritsen: May the letter that is dated April 15, 1939, produced by counsel in response to the subpoena, ad- [2134] dressed to J. G. Boswell Company, Los Angeles, California, and signed by H. G. McKeever, Secretary, be marked Board's Exhibit 28 for identification?

(Thereupon the document above referred to was received and marked as Board's Exhibit No. 28 for identification.)

Q. (By Mr. Mouritsen) Now, Mr. Robinson, I will show you a document which has been marked Board's 24 for identification, which consists of two pages which have been stapled together, and I will ask you if that is your signature that appears on the second page thereof.

Mr. Clark: Mr. Examiner, we will waive the

(Testimony of Louis T. Robinson.)

necessity to authenticate any of these. We will concede the authentication and they may just be offered so far as we are concerned, except for certain general objections I will make to their competency.

Mr. Mouritsen: I think perhaps——

Mr. Clark (Interrupting): You go right ahead, then.

Mr. Mouritsen: We will identify them. I will attempt to lay a complete foundation.

The Witness: That is my signature.

Q. (By Mr. Mouritsen) On Board's 25 for identification is a memorandum from Mr. Hammond to yourself, is that correct?

A. That is correct.

Q. You are acquainted with Mr. Hammond's signature? A. Yes, sir. [2135]

Q. Is that his signature that appears on the memorandum? Is that correct? A. Yes, sir.

Q. And Board's 26 for identification is a letter consisting of two pages addressed to the company here in Corcoran and directed to the attention of yourself and Mr. G. L. Hammond, is that correct?

A. That is correct.

Q. And on the second page appears what purports to be the signature of Mr. Fred G. Sherrill, treasurer of the company. I will ask you if you are acquainted with his signature. A. Yes, sir.

Q. And is that his signature?

A. Yes, that is his signature.

Q. Board's 27 for identification appears to be

(Testimony of Louis T. Robinson.)

a letter directed to the company at Los Angeles signed by Mr. Hubbard and Mr. Roberson. I will ask you if you received a copy of that letter.

A. I received the signed copy of it.

Q. Then you obtained the original that has been marked Board's 27 from the company files in Los Angeles, is that correct?

A. Yes, sir, that is correct.

Mr. Clark: Mr. Mouritsen, I have those signed copies if you want them. [2136]

Mr. Mouritsen: I prefer the originals.

Q. And the document that has been marked Board's 28 for identification appears to be a letter addressed to the company in Los Angeles and signed by Mr. McKeever, and I will ask you if you are acquainted with the signature of Mr. H. G. McKeever.

A. I am.

Q. Is that his signature?

A. Yes, that is his signature.

Q. Did you receive a copy of that letter, that is, Board's 28 for identification?

A. Yes. I received a signed copy.

Q. And you obtained the original, which is Board's 28 for identification, from the Los Angeles office, is that correct?

A. Yes.

Mr. Mouritsen: Very well.

At this time, Mr. Examiner, I will offer Board's Exhibits 24 for identification, Board's 25 for identification——

Mr. Clark: Let us take them singly as I have different objections.

(Testimony of Louis T. Robinson.)

Mr. Mouritsen: All right.

At this time, Mr. Examiner, I will offer Board's 24 for identification in evidence.

Trial Examiner Lindsay: May I see it?

(The document referred to was passed to

Trial Examiner [2137] Lindsay.)

Mr. Clark: May I make my objection after your Honor has read it?

Trial Examiner Lindsay: You may make it now while I read it.

Mr. Clark: Very well.

To which we object on behalf of the J. G. Boswell Company upon the general ground that there has been no showing in this case thus far, Mr. Examiner, which establishes any violation of the Act by the company on the part of anyone to bind the company; and on the part of the respondents Associated Farmers of Kings County, and the Corcoran Telephone Exchange, we object to the introduction of the letter in evidence upon the ground it is hearsay and incompetent, irrelevant and immaterial and in no way binding upon any of these respondents, no authority having been shown in Mr. Robinson to speak for any of them with regard to any of the matters under investigation in this proceeding.

Trial Examiner Lindsay: Board's 24 is received in evidence. You may have an exception.

(Thereupon the document above referred to was received in evidence and marked as Board's Exhibit No. 24.)

(Testimony of Louis T. Robinson.)

BOARD'S EXHIBIT No. 24

Home Office

Los Angeles, California

J. G. BOSWELL COMPANY

Cotton Merchants and Manufacturers

of Cottonseed Products

Corcoran, California

November 18, 1938.

J. G. Boswell Company

Los Angeles, California

Attention: Mr. J. G. Boswell

Gentlemen:

The following is a chronological account of the labor trouble at our plant this morning:

For some time a Mr. Pryor representing himself as an organizer for the Vegetable Oil Workers' Union of Long Beach has been endeavoring to organize a local chapter of this union in our plant. He and his followers were never able to get enough members to form the union and after working several months they began to "put the heat on" our employees in an effort to force in more members. This was done by offering to accept membership without charge and by threatening to "roll" the employees for their jobs if they did not join the union. The threat was made that soon the ginning season would be over and the non-union men fired and the union men retained in the jobs.

This morning at ten o'clock on their own volition,

(Testimony of Louis T. Robinson.)

the employees, both union and non-union, agreed to have a meeting to discuss the matter. The three tentative officers of the local proposed chapter were at the meeting. According to the best information I could get, the meeting practically amounted to nothing but that the non-union men decided that the three tentative officers were making unnecessary disturbance and endangering their jobs. They therefore took the three union men and bodily threw them off the property. The employees then came to see me in a body and demanded that I fire the union men. They were pretty well worked up and I endeavored to calm them down and persuaded them to go back to work, both Union and non-union. They did go back to work but the non-union men evidently kept a little pressure on the union men and in a few minutes the union men left their jobs.

The non-union men then appointed a committee and the committee went to the District Attorney for instructions as to the best method of procedure for them to follow. It is my understanding the District Attorney advised them that up to date they were in the clear and suggested that they think the matter over carefully and determine on the best possible method of handling the matter and that in the meantime, he would give the problem thought and continue to advise them. About noon one of the tentative union officers called me on the telephone and told me he wanted to do the right thing and asked for suggestions as to what he should do. I replied that the Company also wanted to do the

(Testimony of Louis T. Robinson.)

right thing and that I would have to give the matter some thought. While I was at lunch, this party called for me again and advised the switchboard operator that he would call again later in the afternoon. Up to this time he has not called.

The non-union men have now called a meeting for tonight. Their thoughts seem to be running to the formation of a Company union as a protective union in preventing them from being forced into the A.F.L. or the C.I.O. The Caminol Company and the Lucerne Creamery of Hanford have both had the same trouble and this is the method they use in handling same. This is also true of the San Joaquin Light & Power Corporation. I have suggested to some of the cooler heads that at the meeting tonight they appoint a committee to talk with the union men that were run off the job this morning and offer to allow them to come back to work on some basis as might be agreed on at the meeting of the employees tonight. That they take no action in forming a Company union but appoint a committee to investigate such a proposal and make recommendations back to a later meeting.

I think it will be helpful if you will obtain any information you can regarding Company unions and give me the benefit of your ideas in this connection. I will keep you posted as to developments.

Yours very truly,

J. G. BOSWELL COMPANY
LOUIS T. ROBINSON

[Endorsed]: Filed 6/9/39.

(Testimony of Louis T. Robinson.)

Mr. Mouritsen: At this time, Mr. Examiner, I will offer as Board's Exhibit 25 the document that has heretofore been marked Board's 25 for identification. [2138]

(The document referred to was passed to Trial Examiner Lindsay.)

Mr. Clark: To which we make the same objections, your Honor, on behalf of the respective respondents.

Trial Examiner Lindsay: Board's Exhibit 25 is received in evidence. You may have an exception.

(Thereupon the document above referred to was received in evidence and marked as Board's Exhibit No. 25.)

BOARD'S EXHIBIT No. 25

November 19, 1938.

Memo to: Mr. L. T. Robinson

From: Mr. G. L. Hammond

I have made quite a lot of inquiries into the trouble the employees had yesterday while I was away. There seems to have been a misunderstanding between some of the employees as to who would supervise the work and working hours at the plant, myself or the employees that had affiliated themselves with the A. F. L. Union.

It is my understanding that they had decided to get together at 10 o'clock when L. A. Spear came to work and see what it was all about, as he was Presi-

(Testimony of Louis T. Robinson.)

dent of the local Union. In trying to determine why and what the cause of the trouble was and of the rushing of L. A. Spear out of the gate and into the office, my understanding is that O. L. Farr, R. K. Martin and some of the others that possibly had joined the Union were passing the word along that they were giving them their last chance to get in the Union or they would lose their jobs, but were passing the buck to L. A. Spear and he wasn't there yet. That seems to be the reason of their closing down the gin after 10 o'clock.

I find that Lonnie Spear did get on the bale wagon and tell them that they were going to prorate the work and work eight hours only, and if they wanted to work here they would have to join their Union.

Then W. C. Nichols got up some place where he could ask Spear outright if he understood him to say that they were taking charge of all the work and Spear answered yes. Then Nichols asked Spear if he meant that for the boys to work here they would have to join the Union, and Lonnie answered that he meant that very thing.

Then someone in the crowd said "Let's throw him out", and they proceeded to rush him out of the gate and into the office.

I am sure this would never have happened if I had been here, because everything was ok when I left about 8:30. I am very positive nothing like that would ever have happened anyway if Lonnie hadn't told them they were going to prorate the

(Testimony of Louis T. Robinson.)

work and working hours and that they would have to join the Union to work here.

I think they should have continued to operate and let me handle the problem when they knew that I would be back that evening.

G. L. HAMMOND

[Endorsed]: Filed 6/9/39.

Mr. Mouritsen: At this time, Mr. Examiner, I will offer in evidence the document that has heretofore been marked Board's Exhibit 26 for identification, and I will request that the reporter be instructed to staple the card that is a part of that exhibit to the letter in order that it may not become detached therefrom.

Mr. Clark: To which we make the same objection as to the respective respondents.

(The document referred to was passed to Trial Examiner Lindsay.)

Trial Examiner Lindsay: Board's Exhibit 26 is received in evidence and the reporter is instructed to attach the card by stapling it to the exhibit itself. You may have an exception.

(Thereupon the document above referred to was received in evidence and marked Board's Exhibit No. 26.)

(Testimony of Louis T. Robinson.)

BOARD'S EXHIBIT No. 26

[Card Attached to Exhibit]:

California State Council of
Soap and Edible Oil Workers

Affiliated With American

Federation of Labor

E. F. Prior

Secy-Treas.

309 Broad Ave.

Wilmington 1455

Wilmington, Cal.

J. G. BOSWELL COMPANY

Cotton Merchants and Manufacturers

of Cottonseed Products

354 South Spring Street

Los Angeles, California

November 25, 1938.

J. G. Boswell Company

Corcoran

California

Attention of Mr. L. T. Robinson

Mr. G. L. Hammond

Gentlemen:

Labor Matters

Mr. Prior, Secretary and Treasurer of the California State Council of Soap and Edible Oil Workers, called on Colonel Boswell this afternoon.

Colonel Boswell told Prior that the notice to employees, now posted on the bulletin board at Corcoran, covered his position and that of the company. He also told Prior that those employees who

(Testimony of Louis T. Robinson.)

had been put off the property, as outlined in your letter of November 18, would (provided there was work for them) be paid during the period of their absence in accordance with the policy of the company under the National Labor Relations Act, as outlined in the notice.

Colonel Boswell also told Prior that the responsible individuals in the management of the Corcoran plant were Mr. L. T. Robinson and Mr. Gordon L. Hammond, and that while in the conduct of the business and the running of the plant certain authority might be delegated as between these two individuals and others on the company's payroll, that he, Colonel Boswell, was not acquainted with the detail in this respect.

Prior stated that he had a better understanding of the company's business following his talk with Colonel Boswell, at which point he was told that the published notice constituted all there was to the company's position, and anything which Prior may have inferred from the conversation which went beyond this notice was not in keeping with the position of the company, that we felt the notice was clearly in keeping with the National Labor Relations Act, and it was the intention of the company to conduct its affairs strictly in accordance with the law.

Yours very truly,

FRED G. SHERRILL,

Treasurer

[Endorsed]: Filed 6/9/39.

(Testimony of Louis T. Robinson.)

Mr. Mouritsen: At this time I will offer Board's Exhibit [2139] 27, the document heretofore marked Board's Exhibit 27 for identification.

(The document referred to was passed to Trial Examiner Lindsay.)

Mr. Clark: To which we object on behalf of all respondents that the letter is hearsay and is incompetent, irrelevant and immaterial and not binding upon any of them.

Trial Examiner Lindsay: Board's Exhibit 27 is received in evidence. You may have an exception.

(Thereupon the document above referred to was received in evidence and marked Board's Exhibit No. 27.)

BOARD'S EXHIBIT No. 27

Corcoran, California

November 29, 1938

J. G. Boswell Company
354 South Spring Street
Los Angeles, California

Gentlemen:

Please take notice that at 7:00 P. M. November 28, 1938, at the American Legion Hall in Corcoran, California, seventy eight employees of the J. G. Boswell Company at Corcoran organized themselves into an employees' association under the National Labor Relations Act and unanimously adopted a

(Testimony of Louis T. Robinson.)

constitution and by-laws by which they are to be governed. This constitutes about 95% of the Corcoran employees.

The following officers were elected and constitute the governing board of the association:

President—J. W. Hubbard

Vice President—O. W. Busby

Secretary—E. M. Roberson

Treasurer—S. F. Brenes

Labor Relations Board

R. B. Lloyd

W. F. Willoughby

H. G. McKeever

Very truly yours

J. G. BOSWELL CO.

EMPLOYEES' ASS'N.

J. W. HUBBARD

President

E. M. ROBERSON

Secretary

Copy to J. G. Boswell Company, Corcoran, California.

[Endorsed]: Filed 6/9/39.

Mr. Mouritsen: At this time, Mr. Examiner, I offer as Board's Exhibit 28 the document heretofore marked as Board's Exhibit 28 for identification.

(The document referred to was passed to Trial Examiner Lindsay.)

(Testimony of Louis T. Robinson.)

Mr. Clark: To which we make the same objection on behalf of all respondents.

Trial Examiner Lindsay: Board's Exhibit 28 is received in evidence. You may have an exception.

(Thereupon the document above referred to was received in evidence and marked Board's Exhibit No. 28.) [2140]

BOARD'S EXHIBIT No. 28

April 15, 1939

J. G. Boswell Company
Los Angeles, California

Gentlemen:

At the annual meeting of the J. G. Boswell Company Employees Association on April 5, 1939, the question was raised from the floor regarding the unemployment of association members, and a motion was made requesting the Governing Board of the Association to notify Company officials at both Corcoran and Tipton that the Association is keeping a list of unemployed members with their qualifications and requesting the management to get in touch with the Association when new men are needed.

At a meeting of the Governing Board of the Association on April 13, 1939, the secretary was directed to perform this duty which is accomplished herewith. I do, however, wish to emphasize the fact that this is merely a request. We are not agitating for a closed shop, but we do want to do everything

(Testimony of Louis T. Robinson.)

that is reasonable and just to keep our members employed.

Very truly yours,

H. G. McKEEVER,

Secretary

CC to Mr. L. T. Robinson, Corcoran

CC to Mr. Leon Jones, Tipton

[Pencil notation]: Read by Mr. Boswell.

[Endorsed]: Filed 6/9/39.

Q. (By Mr. Mouritsen) Now, directing your attention, Mr. Robinson, to the date of November 18th, 1938, which has been identified as the day upon which certain Union employees left the Company plant, I will ask you if you did not know that a meeting of the employees was to be held at the Company plant on that evening?

Mr. Clark: Well, I object to that on the ground—as to the time, what time of day?

Trial Examiner Lindsay: You may specify the time.

Q. (By Mr. Mouritsen) Well, at any time during the day, did you know that a meeting of the employees was to be held at the plant that evening?

Mr. Clark: I object to that upon the ground it is incompetent, irrelevant and immaterial because I assume, Mr. Examiner, if—I won't elaborate on that. I would like the time identified. I think it is quite important as to whether or not it was before or after the disturbance.

(Testimony of Louis T. Robinson.)

Mr. Mouritsen: That is what I am trying to find out. I am asking him at any time.

Trial Examiner Lindsay: He may answer. Proceed.

Mr. Clark: Very well.

The Witness: I had heard a report that there was to be a meeting.

Q. (By Mr. Mouritsen) And can you fix the time of the day at which you first heard such a report? [2141]

A. My best recollection is during the afternoon of that day.

Q. And you were at the plant, were you not, during the entire day of November 18th, 1938?

A. I was there during the entire working day. I went to lunch before.

Q. And can you fix the time during the working day when you first heard such a report that there was to be a meeting at the plant that evening?

A. I think during the afternoon is the best I can do.

Q. Do you recall from whom you heard that report?

A. No, I don't. I talked to quite a few people during the day, and some of them I heard the report from, but I couldn't say exactly who.

Q. And were you at the plant during the evening when this meeting was held—when this meeting of the employees was held at the plant?

A. I was not.

(Testimony of Louis T. Robinson.)

Mr. Mouritsen: You may inquire.

Mr. Clark: May I have a short recess, Mr. Examiner? It is almost 11:00 o'clock.

Trial Examiner Lindsay: Yes, a ten minute recess.

(At this point a short recess was taken, after which proceedings were resumed as follows:)

Trial Examiner Lindsay: Hearing called to order.

Mr. Clark: The Respondents are ready, Mr. Examiner. [2142]

Mr. Mouritsen: Ready for the Board, Mr. Examiner.

Mr. Clark: Mr. Robinson, please.

May I have Board's Exhibit No. 24, Mr. Mouritsen?

Mr. Mouritsen: I think the reporter has it.

(The document referred to was passed to Mr. Clark.)

Cross Examination

Q. (By Mr. Clark) Mr. Robinson, I hand you Board's Exhibit 24, which is a letter dated November 18th, 1938, written by you to the Los Angeles office of the J. G. Boswell Company, attention Mr. J. G. Boswell, and I want to direct your attention particularly to paragraph—the opening sentence of paragraph 4 on the first page of that letter, in which you say that the non-Union men then appointed a committee and the committee went to the District

(Testimony of Louis T. Robinson.)

Attorney for instructions as to the best method of procedure for them to follow.

Now, will you please tell us whether or not you had any notice whatsoever that the men were about to appoint a committee or had appointed a committee prior to the time it was in fact appointed?

A. I had some information that might be construed as a notice, yes, sir.

Q. And will you please tell us what that was?

A. Two or three of the men came in to me and asked my advice.

Q. And when was this?

A. This was the morning of the 18th, after the incident out [2143] in the plant.

Q. After the incident at the plant?

A. Yes, sir.

Q. And was this after the so-called non-Union men had left the plant?

A. Yes, sir.

Q. I mean the so-called Union men had left the plant?

A. Yes, so-called Union men.

Q. Do you remember who these men were that came to you?

A. I think there were three of them, and the best of my recollection is that Rube Lloyd and Clyde Sitton were two of them, but I can't place the third; and there might not have been a third.

Q. All right.

Prior to that time, Mr. Robinson, had you had any notice or inkling whatsoever of the fact that there was to be any disturbance at the plant that morning?

(Testimony of Louis T. Robinson.)

A. Prior to that time—I had known that this disturbance had occurred. That was after the disturbance.

Q. Let us limit my question this way: Prior to that time a disturbance did in fact occur at the plant which you have heard testified to here by various witnesses, did you have any inkling whatsoever that there was to be a disturbance that morning?

A. None whatever. [2144]

Q. What was the first, Mr. Robinson, what was the first knowledge that you had that a disturbance had occurred?

A. The first knowledge I had, I was in Mr. Elbert Armour's office, and a large number of men crowded into the office and overcrowded into the hall.

Q. Where is Mr. Armour's office?

A. Mr. Armour's adjoins mine on the East and is next to the hallway—West of the hallway on the North side of the office building.

Q. And that is the same office building that you have heard described here in the various testimonies of various witnesses as the administration building, and sometimes the office building?

A. Yes, sir.

Q. And by the way, what is Mr. Armour's position in the Company?

A. Mr. Armour is assistant to me.

Q. That is, he is assistant to the General Manager?

A. That is right.

(Testimony of Louis T. Robinson.)

Q. Am I correct, then, in stating that prior to the time these men crowded into Mr. Armour's office that morning, that you had had no notice whatsoever that there had been a disturbance or there was to be one? A. That is correct.

Q. Prior to that time, had you had any knowledge whatsoever [2145] or any notice whatsoever that any committee had been appointed by the non-Union men? A. None at all.

Q. All right.

Now, you told us that sometime after this incident of the morning of November 18th, a committee, or, that is, three men called on you. Is that true?

A. That is true. I think three, perhaps two.

Q. All right.

At any rate, someone did.

And that they asked your advice?

A. That is correct.

Q. Will you please state what advice they asked from you, and what advice you gave them, if any?

A. Well, they asked me to advise them as to what I thought they should do in connection with the disturbance that had taken place. I told them that I was not in a position to advise them, and that they would just have to seek other advice.

Q. I see.

Now, is that the first that you knew, or the first basis of information that you had that there was a committee that had been appointed by the non-Union men?

(Testimony of Louis T. Robinson.)

A. They didn't represent themselves as a committee at that time to me.

Q. I see. [2146]

Is that what you referred to a little while ago on your cross examination in stating that you had some knowledge that there might be a committee?

A. The knowledge of a committee I had was later on in the day.

Q. All right.

Will you please tell us what happened then?

A. I told these parties that I couldn't advise them——

Mr. Mouritsen (Interrupting): May we have a foundation for this?

Mr. Clark: Yes. And before we get to that, Mr. Robinson, so long as we are on these events, let us cover them so I won't have to repeat them.

Q. When all—when this crowd of men came into Mr. Armour's office where you were, on the morning of November 18th, what, if anything, did you say to them? What, if anything, did they say, first?

A. There were a lot of them talking at the same time, and it was difficult for me to get the import of the whole situation, and when I finally got down to just what was the trouble and what they were saying, they were demanding that I fire the non-Union men.

Q. All right.

Prior to that——

A. (Interrupting) I am wrong in that—that I fire the [2147] Union men.

(Testimony of Louis T. Robinson.)

Q. I see.

Mr. Robinson, prior to that time had you been working with Mr. Armour in the office on some Company matter?

A. Mr. K. S. Batil was in the office, and I had just walked into Mr. Armour's office and was still standing up, when they came.

Q. And were you discussing some Company matter which had nothing at all to do with the employment situation?

A. Yes, I was discussing a matter connected with Mr. Batil's business.

Q. As I understand it, this swarm of men came into the office, is that correct?

A. That is correct.

Q. And you found out, or made out from them that they were demanding that you fire the Union men?

A. That is correct.

Q. What, if anything, did you say to the men?

A. I told the men that they were too excited, and I wanted them to go back to work, both Union and non-Union, and after they cooled down I would come around and talk to them and see if we couldn't straighten the matter out.

Q. All right.

What, if anything, next occurred then, Mr. Robinson, so far as this particular subject matter is concerned? [2148]

A. They left the office.

Q. All right.

(Testimony of Louis T. Robinson.)

And did you then later receive a telephone call from anyone?

A. I later received a telephone call from Mr. R. K. Martin.

Q. And about what time was that?

A. It was before noon, and I would say probably between 11:00 to 11:30. [2149]

Q. What, if anything, did Mr. Martin say?

A. Mr. Martin called me up and he said the union men had decided it was best for them to go home and that they wanted to do the right thing, and what did I think that they should do.

Q. And what reply did you make to that?

A. I told Mr. Martin the company also wanted to do the right thing, but I would just have to have time to think the matter over.

Q. All right.

Now, was it after that that these employees came to you?

A. To the best of my recollection, it was after that.

Q. All right.

Now, a while ago you said that later in the afternoon some employees called on you in the form of or as a committee. Do you remember that?

A. Yes, sir.

Q. All right.

Will you please tell us about when that was during the afternoon of November 18th?

A. Well, my best recollection is that was fairly

(Testimony of Louis T. Robinson.)

early after lunch. I would place it around 2:00 o'clock, perhaps.

Q. I see. Who was present there?

A. (Pause)

Q. Where was this conversation held, rather?

A. This conversation was in my office. [2150]

Q. In the office building? A. Yes, sir.

Q. All right.

Who was present, please?

A. To my best recollection, Rube Lloyd, Clyde Sitton, and Arthur Busbee, and myself. No one else.

Q. All right.

What, if anything, did they say to you then?

A. They told me that a committee had gone to see the District Attorney and the District Attorney had told them that he didn't think anything had happened that would be cause for action by his office. They told me further that they discussed the matter generally with the District Attorney and they asked him about forming an Employees' Association, that the District Attorney told them that such associations had been formed by the Caminol Company and the Lucerne Creamery and recommended that they investigate it at those places.

Q. Will you please tell us whether it was in that conversation that you found out that the non-union men had appointed a committee and that the committee had gone to the District Attorney for instructions as to the best method of procedure for them to follow? A. Yes, sir.

(Testimony of Louis T. Robinson.)

Q. All right.

And am I correct in stating that in this letter you were [2151] reporting that fact to Colonel Boswell in Los Angeles? A. That is correct.

Q. And you had had no knowledge whatsoever on that subject matter prior to this committee waiting on you? A. That is correct.

Q. Now, turning over to the second page of the letter of November 18th, I want to direct your attention to this language in the second paragraph: "The Caminol Company and the Lucerne Creamery of Hanford have both had the same trouble and this is the method they have used in handling the same. This is also true of the San Joaquin Light and Power Corporation."

Will you please tell us from whom you first heard the facts which are set forth in that statement?

A. From this committee.

Q. I see.

And did these men say that they had been informed by the District Attorney that these various companies had—or that the employees of these various companies had formed unions?

A. Yes, sir.

Q. All right.

Now, what was your purpose in calling that to Colonel Boswell's attention?

A. Well, I thought that perhaps that the employees in the plant might form one of those associations and that we might be called on to recog-

(Testimony of Louis T. Robinson.)

nize it, and I thought he should be giving [2152] the matter some thought.

Q. Am I correct in stating that you were reporting to the head office information which you had obtained from this committee?

A. That is correct.

Q. Now, I also direct your attention to the last paragraph in the letter reading as follows: "I think it will be helpful if you will obtain any information you can regarding company unions and give me the benefit of your ideas in this connection. I will keep you posted as to developments."

Will you please tell us what your purpose was in asking Colonel Boswell to give you—to obtain any information he could regarding such unions?

Mr. Mouritsen: Objected to as calling for a self-serving declaration.

Mr. Clark: It is cross examination on this letter. I am asking his purpose of it.

Mr. Mouritsen: The document speaks for itself, after all.

Mr. Clark: Well——

Trial Examiner Lindsay (Interrupting): He may answer.

The Witness: I didn't know anything about the union, and I didn't know what I might be called on for a decision on if they formed an employees' union; and I wanted to have the benefit of any information Mr. Boswell could obtain. I didn't

(Testimony of Louis T. Robinson.)

know but what he might be called on to make decisions or perhaps to recognize an employees' union and I thought he should post himself in that respect. [2153]

Q. (By Mr. Clark) Mr. Robinson, did you have anything whatsoever to do, or to your knowledge, did any other representative of the Boswell Company have anything to do with the organization of this Employees' Association?

Mr. Mouritsen: Objected to as calling for a self-serving declaration.

Mr. Clark: I submit that.

Trial Examiner Lindsay: He may answer.

The Witness: Nothing whatsoever.

Mr. Clark: That is all.

Redirect Examination

Q. (By Mr. Mouritsen) Now, Mr. Robinson, did you state that during the day of November 18th, 1938, you received a phone call from R. K. Martin?

A. Yes, sir, I believe I did, but that was wrong. O. L. Farr made the phone call.

Q. You now want to change your testimony in that regard?

A. I want to change that to O. L. Farr.

Q. And you are acquainted with Mr. Martin, and have been for some time, is that correct?

A. That is correct.

Q. You are also acquainted with Mr. O. L. Farr, and have been for some time, isn't that correct?

(Testimony of Louis T. Robinson.)

A. That is correct.

Q. Now, directing your attention again to the time when these [2154] men crowded into your office, I believe you stated that certain of these men were demanding that the Union men be fired, is that correct?

A. That is correct.

Q. Will you tell us the names of those employees who demanded that the Union men be fired?

A. I will just tell you to the best of my recollection.

Q. That is all I am asking for.

A. The circumstances were rather unusual, and it is hard to remember. I believe Earl Liggett was talking and Phil Nichols and Rube Lloyd. I can't recall any others.

Q. And do you recall what these gentlemen or any of them said regarding the incident that had taken place just before that time?

A. I don't just know what conversation would exactly answer that, but they said that we are not going to run this plant both Union and non-Union, and there is a big majority of the non-Union men, and we want the Union men discharged.

Q. Now, was anything else said about that incident?

A. I don't recall anything else.

Q. That is the only thing that you recall about the whole incident that had taken place, the only conversation, is that correct?

(Testimony of Louis T. Robinson.)

A. The only conversation at that time. You are asking me now while the men were in the office. That is the conversation [2155] I am giving you.

Q. Yes.

You have given us your best recollection as to all of the conversation that took place in the office at that time, is that correct?

A. Adding to that what I said, yes, sir.

Q. And what you said was that they should go back to work until you had an opportunity to straighten it out, is that correct?

A. Well, if you want me to state it, that is not exactly correct. That is approximately.

Q. Would you state just what you said at that time?

A. I told them, I said, "You are all too excited and you have got to cool down. I want you to go back to work, both Union and non-Union, and after a while I will come around and see if I can't straighten this up."

Q. Now, do you recall anything else that you said?

A. I don't recall anything else, because they immediately left.

Q. Those men went right out of the office as soon as you told them to go back to work?

A. Well, I was pleased as to how quickly they did go out.

Q. In other words, they went out even more quickly than usual, is that correct?

(Testimony of Louis T. Robinson.)

A. I was well pleased. [2156]

Q. Now, you have given us, then, Mr. Robinson, the entire conversation that you recall as taking place at that time? A. Yes, sir.

Q. Both as to what was said by any of the men present, and what was said by yourself, is that correct? A. That is correct.

Q. And to the best of your recollection, nothing was said about what had happened, what had taken place out in the yard, is that correct?

A. That is correct.

Q. At that time that was the only understanding you had of incident, is that correct?

A. At that time, that is correct.

Q. And all you did was to tell them to go back to work, and you would straighten it out, is that correct?

Mr. Clark: Well, I——

The Witness (Interrupting): In substance, that is correct.

Q. (By Mr. Mouritsen) And did you have any—what did you mean by the statement that you would straighten it out? What were you going to straighten out?

A. Well, there was a demand on me there that I fire a bunch of men. I assumed that there was a reason behind their demand, and my idea at that time was that I was going around later—I refused to do that—I was going around and talk to the men [2157] and see if I couldn't get everybody

(Testimony of Louis T. Robinson.)

satisfied and the business running smooth again.

Q. Did you have any understanding as to what reasons there were behind such a demand?

A. Well, I had known, Mr. Mouritsen, that there was two groups of employees, part wanting to be in the Union and part not wanting to be in the Union. Naturally I gave consideration to that at the time.

Q. And how long had you known that there were two groups at the plant prior to that time?

A. I would say the first recollection I can recall back to anything like that, I heard about the meeting that was held here in the American Legion Hall sometime in July.

Q. Do you recall how you obtained knowledge of that meeting that was held in the American Legion Hall in July?

A. Just gossip around the office.

Q. And between July and that date, did you receive any other information regarding these two groups that were in the plant?

A. No. It was current talk about the place, and I heard rumors and gossip.

Q. I believe you stated that Rube Lloyd was one of the men who told you, or who demanded that morning that the Union men be fired, is that correct?

A. That is the best of my recollection. These three are all that I seem to recall. [2158]

Q. Now, are you acquainted with the type of work that Rube Lloyd does at the plant?

(Testimony of Louis T. Robinson.)

A. Yes, sir.

Q. And is it a correct statement to say that Mr. Rube Lloyd is foreman of the millwright gang?

A. Well, I would have to have a definition of "foreman", I think, before I could answer that. I wouldn't consider him a foreman.

Trial Examiner Lindsay: May I have the first answer?

(The record referred to was read by the reporter, as set forth above.)

Q. (By Mr. Mouritsen) Now, will you state, Mr. Robinson, what you do consider a foreman, how you define a foreman so far as the operations at the plant are concerned?

A. I would define a foreman as Gordon Hammond. He is in charge of everything out there.

Q. Well, now, would you tell us just what a foreman at the plant would do, what duties he would perform, what he would do that would lead you to classify him as a foreman?

A. Well, I don't know of anybody at the plant that carries the title of foreman. That was the reason I asked you to give me your definition of a foreman. We have nobody. Rube Lloyd is not classed as a foreman at the plant.

Q. Well, will you state whether or not you have a number of employees at the plant who direct the work of other employees, [2159] give them orders and directions regarding their work?

A. Why, we have a large number of employees

(Testimony of Louis T. Robinson.)

that direct work on certain jobs, as long as that particular job is running.

Q. Doesn't Rube Lloyd, or hasn't he in the past, directed the work of the men in the millwright gang?

A. Rube Lloyd is an expert carpenter and construction man, and it is customarily the practice for us to send Rube Lloyd out with two or three or four men to do a job, and I would say Rube Lloyd was the head man on that job at that time.

Q. That has been done on a great number of occasions in the past, hasn't it? You have sent him out with other men, two or three or four, to direct their work, isn't that correct?

A. For a particular job, that is correct, yes, sir.

Q. Now, Rube Lloyd was also on this committee that came in to see you later in the day on November 18th, 1938, isn't that correct?

A. I judge, Mr. Mouritsen, that the people that came back to me were part of a committee. I don't recall a statement to that effect.

Q. I thought that you or Mr. Clark referred to that as a committee.

I will say he was one of these three men who came in later in the day to discuss, or who stated that they had seen the District Attorney, is that correct? [2160]

Mr. Clark: Mr. Mouritsen, I think the witness described it as a committee in the letter, and that is where I went into it.

(Testimony of Louis T. Robinson.)

The Witness: The point I was making is, I wasn't saying that they were not a committee. I don't recall a statement to me that they were a committee, but they might have been. I have no exact recollection, but Rube Lloyd was one of the men that came in to see me and said that with others he had gone to see the District Attorney. That is correct.

Q. (By Mr. Mouritsen) And one of the other members of that group was O. W. Busby?

A. That is my best recollection.

Q. Now, Mr. Busby works in the machine shop, doesn't he? A. That is correct.

Q. And hasn't he, from time to time in the past, directed the work of other men working in the machine shop?

A. Well, I am not too well qualified to pass on that, but Mr. Busby is an expert mechanic. In my opinion, he is the highest priced man in the machine shop and the most experienced man in the machine shop.

Q. And if any matters come up relative to the machine shop, don't you or Mr. Gordon Hammond take them up with Mr. Busby?

A. Well, I would take them up with Mr. Hammond and it would be my opinion that Mr. Hammond would consider Mr. Busby the best qualified man in the machine shop. [2161]

Q. Aren't there a number of other men in the machine shop to whom Mr. Busby gives the directions that are relayed to him?

(Testimony of Louis T. Robinson.)

A. I wouldn't be qualified to say that. There were a number of other men in the machine shop. I would think that Mr. Busby was the best machinist there.

Q. In other words, you are not acquainted with the way in which the affairs of the machine shop are run, is that correct?

A. Well, I personally give no orders. Anything that I have to say, I say to Mr. Gordon Hammond, and he gives the orders, so I am not too qualified to testify along that line.

Q. Now, I believe you said that the third one was Mr. Sitton? A. Yes, sir.

Q. That is Clyde Sitton?

A. Clyde Sitton.

Q. I will ask you if he isn't in any way related to Gordon Hammond?

A. I don't know that, whether he is or whether he is not. I can't answer.

Q. You have never talked with Gordon Hammond about that?

A. I don't recall any conversation.

Q. Well, isn't it—I will ask you if it isn't common knowledge at the plant that Clyde Sitton is Gordon Hammond's nephew?

Mr. Clark: I will object to that on the ground it has [2162] already been asked and answered. It calls for a conclusion of this witness. He says he does not know, couldn't tell us about it.

Trial Examiner Lindsay: He may answer.

(Testimony of Louis T. Robinson.)

The Witness: Mr. Mouritsen, I am not saying that he isn't. I just don't happen to know myself.

Mr. Clark: May I have the question read back?

Trial Examiner Lindsay: Or the answer?

Mr. Clark: The question.

(The record referred to was read by the reporter, as set forth above.)

Q. (By Mr. Mouritsen) Your answer is No, isn't it, Mr. Robinson?

Mr. Clark: That isn't the answer.

Trial Examiner Lindsay: Read the answer.

(The record referred to was read by the reporter, as set forth above.)

Trial Examiner Lindsay: I don't think that is a direct answer to the question.

The Witness: I can say that I don't know whether it is common knowledge at the plant or not.

Mr. Mouritsen: Well, I think Mr. Gordon Hammond is going to be on the stand?

Mr. Clark: Yes, he is.

Mr. Mouritsen: We can ask him that. I think that is all. [2163]

Recross Examination

Q. (By Mr. Clark) Mr. Robinson, on your re-direct examination by Mr. Mouritsen, you said that you had known that there were two groups of men, namely some that wanted to join a Union and

(Testimony of Louis T. Robinson.)

some that didn't, in the plant, since July of 1938, or that meeting in this hall in July of '38. Is that right? A. That is right.

Q. And that you first testified that you had picked that up from common gossip and rumor since that time? A. That is correct.

Q. As a matter of fact, didn't you have a meeting with Mr. Prior around the first of September of 1938? A. Yes, sir.

Q. And am I not correct in stating that at that meeting, he informed you, in substance and effect, that he was organizing a Union, or that he was attempting to get the employees of the plant to join a Union? A. Yes, sir.

Q. Now, will you please tell us whether or not Mr. Ruben Lloyd has any authority from the J. G. Boswell Company, or anyone on its behalf, to employ or discharge any employee?

A. None whatever.

Q. Will you please tell us whether or not Mr. Busby or Mr. Sitton has any authority from the J. G. Boswell Company, or from anyone on its behalf, to employ or discharge any employee? [2164]

A. None whatever.

Q. Will you please tell us who has such authority, if anyone has, from the Company?

A. At Corcoran, no one but Gordon Hammond and myself.

Mr. Clark: I see.

I think you have seen this, Mr. Mouritsen, these three documents?

(Testimony of Louis T. Robinson.)

(The documents referred to were passed to Mr. Mouritsen.)

Mr. Mouritsen: May I read them?

Mr. Clark: Yes, indeed.

(Conference between counsel.)

Q. (By Mr. Clark) Now, Mr. Robinson, I show you—first off, Mr. Examiner, I will ask that a document in long hand on the stationery of the hotel at Tulare, be marked for identification, as Respondent Boswell's Exhibit for identification next in order in this case. [2165]

Trial Examiner Lindsay: Respondent Boswell's 11 for identification.

(Thereupon the document above referred to was received and marked Respondent Boswell's Exhibit No. 11 for identification.)

Mr. Clark: And next a typewritten document headed "Notice to Employees" upon which there appears in longhand the word "Final draft approved by Larson" and I ask that that be marked as Respondent Boswell's Exhibit for identification next in order.

(Thereupon the document above referred to was received and marked Respondent Boswell's Exhibit No. 12 for identification.)

Mr. Clark: And finally a further typewritten document entitled "Notice to Employees," and I ask that that be marked Respondent Boswell's Ex-

(Testimony of Louis T. Robinson.)

hibit for identification next in order, which I believe is 13.

(Thereupon the document above referred to was received and marked Respondent Boswell's Exhibit No. 13 for identification.)

Q. (By Mr. Clark) Mr. Robinson, I show you the document written in longhand, in pen and ink, on the stationery of the Hotel Tulare, which has been marked Respondent Boswell's Exhibit 11 for identification, and I will ask you to tell us what that is, please.

A. This is a document that was prepared by Mr. Larson with a request that we post it on our bulletin board for a period of fifteen days. [2166]

Q. All right.

Who is Mr. Larson?

A. Mr. Larson was a representative of the National Labor Relations Board out of the San Francisco office.

Q. All right.

And when, if ever, did Mr. Larson call upon you?

A. Shortly after the incident of November 18th. The best I could fix it would be around November 21st to the 25th.

Q. All right.

In other words, subsequent to November 18th and prior to November 25th, is that correct?

A. That is my best recollection.

Q. Am I correct in stating that Mr. Larson at a conference between you and Mr. Larson submitted

(Testimony of Louis T. Robinson.)

the document written in longhand on the Hotel Tular stationery, which is marked Respondent's Exhibit 11 for identification, to you?

A. He did. Mr. Larson was there at least two days.

Q. All right.

Did he submit this document to you?

A. He did.

Q. All right.

Was anyone else present when he submitted it to you?

A. Mr. John McWilliams was present.

Q. Who is Mr. McWilliams?

A. Mr. McWilliams is a vice president of the company living [2167] in Los Angeles.

Q. Can you tell us whose handwriting this document is in, if you know?

A. Well, Mr. Larson presented it already written up.

Q. I see.

A. I didn't see him write it.

Q. All right.

Now, I want to direct your attention, Mr. Robinson, to a change which appears in the second line of the text of this instrument, namely, a striking out of the words "supervisory employees" by pencil, and an encirclement of these words from which a line is drawn to the words "proper representatives" written in pencil appearing at the top of the document above the words "Notice to Employees."

Have you that change in mind?

(Testimony of Louis T. Robinson.)

A. Yes, sir.

Q. Can you tell us whose handwriting the words "proper representatives" are in?

A. I don't believe I can, but I think it is Mr. McWilliams. I wouldn't be sure.

Q. And likewise a question mark just opposite the words "supervisory employees." Do you notice that? A. Yes, sir.

Q. Can you tell us when that change was made and what was the occasion for it? [2168]

A. Mr. Larson in the first place presented this to us. We discussed it and we asked to substitute the words "proper representatives" for "supervisory employees."

Q. How did the notice read when Mr. Larson first presented it to you, just with respect to those first three lines?

A. "This company will not through its supervisory employees or otherwise restrain, coerce, intimidate, or interfere with our employees' right to self-organization as guaranteed by the National Labor Relations Act."

Q. All right.

Am I correct in stating then that after a discussion with Mr. Larson you suggested that the change testified to be made? A. That is correct.

Q. And will you read the language to us as changed?

A. "This company will not through it proper representatives or otherwise restrain employees'

(Testimony of Louis T. Robinson.)

right to self-organization"—I skipped a line.

"This company will not through its proper representatives or otherwise restrain, coerce, intimidate, or interfere with our employees' right to self-organization as guaranteed by the National Labor Relations Act."

Q. All right.

Now, will you please tell us whether or not Mr. Larson agreed to that change?

A. He did agree to it. [2169]

Q. Now, just so the record may be complete, I direct your attention to a further change which appears in the body of this instrument consisting of the words "Cotton Products, Mill and Grain Workers' Union, Local 21798," through which a red line is drawn.

Will you tell us whether or not that change was made with Mr. Larson's consent?

A. We requested Mr. Larson to eliminate that from the notice. He agreed to do it.

Mr. Clark: We will offer the document, just testified to by the witness, in evidence, Mr. Examiner, as Respondent Boswell's Exhibit next in order.

Mr. Mouritsen: No objection.

Trial Examiner Lindsay: Respondent Boswell's 11 is received.

(Thereupon the document above referred to was received in evidence and marked as Respondent Boswell's Exhibit No. 11.)

(Testimony of Louis T. Robinson.)

BOSWELL'S EXHIBIT No. 11

On stationery of Hotel Tulare:

Notice to Employees.

This company will not through its ~~supervisory employees~~ proper representatives or otherwise, restrain, coerce, intimidate, or interfere with our employees' right to self-organization as guaranteed by the National Labor Relations Act.

Furthermore, this company will not discriminate with regard to hire or tenure of employment because of affiliation ~~with Cotton Products, Mill and Grain Workers Union, Local 21798, affiliated~~ with the American Federation of Labor, or any other bona fide labor organization.

This notice will be posted for a period of 15 days.

Name of Company.

[Endorsed]: Filed 6/9/39.

Q. (By Mr. Clark) Now, after the text of that document was agreed upon between you and Mr. McWilliams on the one side and Mr. Larson on the other, was it reduced to typewriting?

A. It was.

Q. I show you a typewritten—I show you the document which has been marked Respondent Boswell's 12 for identification, and directing your attention particularly to the words "Final draft approved by Larson" on it, and also to the initial "S"

(Testimony of Louis T. Robinson.)

[2170] with a circle around it underneath the typing, I will ask you to tell us first how those writings happened to be put on the instrument.

A. This copy was forwarded to Los Angeles so they would know what we had done, and that "S" indicates it went through the hands of Mr. Fred G. Sherrill.

Q. All right.

Whose handwriting—withdraw that.

Who wrote the words "Final draft approved by Larson"?

A. I don't believe I know.

Q. All right.

Now, tell us, is that the draft which was approved by Larson?

A. That is the draft.

Q. After the conversation with you and Mr. McWilliams?

A. That is correct.

Q. All right.

Then did you receive back from—withdraw that.

We will offer this in evidence, Mr. Examiner, and ask that it be marked Respondent's 12.

(Thereupon the document above referred to was received in evidence and marked as Respondent Boswell's Exhibit No. 12.)

BOSWELL'S EXHIBIT No. 12

Final draft approved by Larson.

NOTICE TO EMPLOYEES

This company will not through its proper *represen-*

(Testimony of Louis T. Robinson.)

atives or otherwise, restrain, coerce, intimidate or interfere with our employees' right to self organization and, furthermore, will not discriminate with regard to hire or tenure of employment because of affiliation with the American Federation of Labor or any other bona fide labor organization, as guaranteed by the National Labor Relations Act.

This notice will be posted for a period of fifteen days.

/S/

[Endorsed]: Filed 6/9/39.

Mr. Mouritsen: Who prepared it, Mr. Clark?

Q. (By Mr. Clark) Who prepared, do you know? Was it prepared in your office? [2171]

A. I believe it was prepared in our office.

Q. And as a result of this conversation you had with Mr. Larson?

A. That is correct.

Q. All right.

Trial Examiner Lindsay: May I see it, please?

(The document referred to was passed to

Trial Examiner Lindsay.)

Mr. Clark: Would you like to see the other one, Mr. Examiner?

Trial Examiner Lindsay: No, it isn't necessary.

Q. (By Mr. Clark) I next show you the document marked Respondent Boswell's 13 for identification, and I will ask you whether this document is a true copy—withdraw that.

(Testimony of Louis T. Robinson.)

I will ask you what that is.

A. This is a copy of the notice that Mr. Larson requested us to post on our bulletin board.

Q. All right.

And is that the final draft, Mr. Robinson, of the notice which is set forth in Respondent Boswell's 11, I mean substantially?

A. Yes, sir.

Q. All right.

Will you please tell us whether the copy, or whether a copy of the instrument which you hold in your hand, and which [2172] is marked Respondent Boswell's 13 for identification was in fact posted on the bulletin board in the office at the Corcoran plant?

A. It was posted the same day that Mr. Larson asked us to do so.

Q. And approximately when was that, again?

A. The best I could say, it was between November 21st and November 25th.

Q. And was that after the words "proper representatives" had been substituted for "supervisory employees"?

A. Yes, sir.

Q. And for how long did this notice stay posted?

A. In excess of fifteen days.

Q. All right.

Continuously?

A. Continuously.

Q. Can you tell us where it was posted?

A. We have a bulletin board in the main waiting room just a few feet from the one where the men get their paychecks. I explained this location

(Testimony of Louis T. Robinson.)

to Mr. Larson and he approved it and I posted it there or I believe, actually, Mr. Elbert Arnold posted it there.

Q. At any rate, you know of your own knowledge it remained posted there for in excess of fifteen days after a date early in the week commencing November 21st, 1938, is that right? [2173]

A. Yes, sir.

Mr. Clark: We will offer the last document, which is marked Respondent Boswell's Exhibit 13 for identification in evidence, your Honor.

Mr. Mouritsen: No objection.

Trial Examiner Lindsay: Boswell's Exhibit 13 received.

(Thereupon the document above referred to was received in evidence and marked as Respondent Boswell's Exhibit No. 13.)

BOSWELL'S EXHIBIT No. 13

NOTICE TO EMPLOYEES.

This company will not through its proper representatives or otherwise, restrain, coerce, intimidate or interfere with our employees right to self organization as guaranteed by the National Labor Relations Act.

Furthermore this company will not discriminate with regard to hire or tenure of employment because of affiliation with the American Federation of Labor or any other bona fide labor organization.

(Testimony of Louis T. Robinson.)

This notice will be posted for a period of Fifteen Days.

[Endorsed]: Filed 6/9/39.

Mr. Clark: That is all.

Redirect Examination

Q. (By Mr. Mouritsen) Mr. Robinson, I believe you stated that the only place that this notice, that is, Boswell's 13, was posted was in the office, is that correct? A. That is correct.

Q. Now, as a matter of fact, don't you have in the machine shop another bulletin board?

A. Not that I know of. Not that I know of.

Q. In the machine shop then you have never noticed a bulletin board for the company on which are posted various notices and memoranda?

A. No, I haven't.

Q. Is there in the plant other than in the office any other bulletin board that you have ever noticed?

A. No. That is the only one I have ever noticed.

Q. And do you have a bulletin board—do you have more than [2174] one bulletin board in the office? A. Not that I know of.

Q. Well now, I will ask you if during November of 1938 there were any other bulletin boards at the plant other than the one that you have described as being in the office?

(Testimony of Louis T. Robinson.)

A. Not to my knowledge.

Q. And you are constantly in and about the plant, I take it? Your duties carry you throughout the plant almost every day, do they not?

A. Yes. That is correct.

Mr. Clark: We can easily find out whether there are or not.

Mr. Mouritsen: I think that is all.

Recross Examination

Q. (By Mr. Clark) Mr. Robinson, I believe you said that this board is right next to the pay window?

A. It is just across the hall. The pay window is on the north side of the main waiting room and the bulletin board is in the main waiting room just across the hall from the pay window, I wouldn't think over six feet away.

Q. Will you please state whether or not that bulletin board is where notices intended to be read by the company's employees are customarily posted?

A. We customarily post notices there such as the social security notices and unemployment relief and notices of that [2175] type.

Q. All right.

And will you tell us, please, whether or not in order to obtain their checks it is necessary for the employees to call at this window?

A. It is necessary for the employee or some representative of the employee to call.

(Testimony of Louis T. Robinson.)

Q. In other words, it is the window where they were paid, isn't it?

A. The women come around and get a lot of the checks.

Mr. Clark: I see. That is all.

Mr. Mouritsen: Nothing further.

(Witness excused.)

Trial Examiner Lindsay: We will adjourn until 2:00 o'clock.

Mr. Painter: Your Honor, we have certain witnesses here I would like to have you request to come back.

Trial Examiner Lindsay: Just a moment. Will you please tell those people that all witnesses who have been subpoenaed here are supposed to return at 2:00 o'clock, or all witnesses that are here in behalf of the respondents.

(Whereupon, at 12:00 o'clock noon, an adjournment was taken until 2:00 o'clock p. m. of the same date.) [2176]

After Recess

(Whereupon the hearing in the above-entitled matter was resumed, pursuant to recess, at 2:00 o'clock p. m.)

Trial Examiner Lindsay: Hearing called to order.

Mr. Mouritsen: Ready for the Board.

Mr. Clark: Respondents are ready, Mr. Examiner.

Trial Examiner Lindsay: Do you have any more witnesses?

Mr. Mouritsen: I have some information from Board's 3, Mr. Examiner, that I would like to put in the record, and in order that the respondent may withdraw the same, since it is an original record, I think that the information should be contained in the record. I will ask counsel for the respondent to check with me as I read the information that I propose into the record, to check its accuracy.

Mr. Clark: Very well.

I suggest, Mr. Examiner, if I may, that Board's Exhibit 3 be left right where it is until we can get a chance to go through this record and find out how much of it has been used and I will engage on behalf of the respondents to furnish photostatic copies of the sheets, if I am allowed to withdraw the exhibit for that purpose, when I request it—to furnish photostatic copies of the sheets which have been referred to because, although I don't know what Mr. Mouritsen is going to read into the record now, I do know that I examined some certain sheets of the exhibit and called witnesses' attention to [2177] other entries in it to a rather large extent throughout the Board's case—at least in a dozen instances. I would rather have those full pages in the record in the shape of photostats and then counsel——

Trial Examiner Lindsay (Interrupting): I am sure that you gentlemen can agree on something. May I ask where you have to go to have photostatic work done?

Mr. Clark: I can have them photostated either in Los Angeles or in San Francisco. In other words, if the exhibit should be taken back by the Examiner to Los Angeles, perhaps you could arrange to have a schedule of the sheets photostated down there and the bill sent to us and then the record returned to the Los Angeles office of the Boswell Company from which it came.

Trial Examiner Lindsay: No, I wouldn't care to take the responsibility.

Mr. Clark: We could have someone from Boswell Company pick up from you the document and have such sheets as we would indicate photostated and the sheets delivered to you and the record returned to the company, some arrangement of that sort, or I could take it to San Francisco and have it photostated there and return both the exhibits and the photostats to you with the request that after they have been compared by counsel for the Board that the book be returned to Boswell in Los Angeles. [2178]

We haven't any facilities here for the photostating, I understand.

Trial Examiner Lindsay: I don't think you do at Hanford and I don't think that you do at Fresno.

Mr. McTernan: They do at Fresno.

Trial Examiner Lindsay: They do at Fresno?

Mr. McTernan: Yes.

Trial Examiner Lindsay: Then my suggestion is—this is off the record.

(Discussion outside the record.)

Mr. Mouritsen: May the record show that Board's Exhibit 3 shows that Walden, W-a-l-d-e-n H. Bunker, B-u-n-k-e-r, was first employed by the Boswell Company on March 25, 1939; that he worked, apparently, the week ending April 29, 1939, and received for his work \$47.50, less social security deductions.

Let the record show that Board's Exhibit 3 shows that Leland, L-e-l-a-n-d, Douglas Caffall, C-a-f-f-a-l-l, was first employed by the company on September 26, 1938; that he worked part of the week ending November 3, 1938, and apparently the entire week ending December 1, 1938; part of the week ending December 25, 1938, and apparently the full week ending December 31, 1938. He was next employed, apparently, during the week ending February 2, 1939, and also worked the full week ending May 6, 1939.

Mr. Clark: With respect to Mr. Caffall, I would like the [2179] record to show further, Mr. Examiner, that he received, respectively, the following amounts for the periods indicated: \$12.50; \$75; \$10, being his compensation for the week ending December 25, 1938; \$75 and \$75 and \$75; apparently, according to this record, the man was employed for the week ending December 31, 1938, and then not again until the week ending February 2, 1939, and then not again until the week ending May 6, 1939; and for each of those weeks he received \$75. [2180]

Mr. Mouritsen: Let the record show that

Board's Exhibit 3 indicates that F. A. Champagne was first employed by the J. G. Boswell Company on March 7th, 1939, that he worked part of the week ending March 11th, 1939, for which he received \$8.00; that he apparently worked continuously since March 7th, 1939 through the week ending May 6th, 1939.

Trial Examiner Lindsay: Did we get his first name?

Mr. Mouritsen: His initials are F. A.

And as I understood the statement at the first of the hearing, Mr. Examiner, this book, that is, Board's Exhibit 3, is just completed through the week ending May 6th, 1939.

Mr. Clark: I don't remember that, but we can check and if that is not a correct statement, we will put in testimony on it.

Mr. Mouritsen: May the record show that Board's Exhibit 3 shows that Al Chestnut was first employed by the Boswell Company on December 23rd, 1938, and that he worked from that time until February 23rd, 1939.

May the record show that Board's Exhibit 3 shows that Lee Chestnut—spelled the same as the last one—Lee is the first name—L-e-e—was first employed by the J. G. Boswell Company on December 23rd, 1938, and that he worked continuously from that time to February 23rd, 1939.

Mr. Clark: For the week ending February 23rd, he only has a partial payment of \$4.30, whereas his payment averages [2181] \$33.50 for the rest of the time, except the first week is \$14.00.

Mr. Mouritsen: I will stipulate to that.

May the record show that Board's Exhibit 3 shows that Andrew Clark, C-l-a-r-k, was first employed by the J. G. Boswell Company on January 8th, 1939, that for the pay period ending January 14th, 1939, he received \$28.80; for two pay periods ending February 3rd, 1939, he received \$9.20.

Mr. Clark: Well, am I not correct in stating, Mr. Mouritsen, that according to our understanding of the record, it shows that this man worked the week ending—apparently worked the week ending January 14th, 1939, for which he received \$28.80, and then not again until he worked a portion of the week ending February 23rd, 1939, for which he received \$9.20?

Mr. Mouritsen: That is correct.

May the record show that Board's Exhibit 3 indicates that Charles A. Crye, C-r-y-e, started to work for the J. G. Boswell Company during the pay period ending May 5th, 1938.

Mr. Clark: We had better furnish a photostatic copy of the page on this man, because it is quite long, instead of reading it in.

Mr. Mouritsen: Yes, that would perhaps be preferable.

Trial Examiner Lindsay: You had better make a note of it right there so you will know exactly what you are doing.

Mr. Mouritsen: And may the record show that Board's Exhibit [2182] 3 indicates that Fred Matthews, M-a-t-t-h-e-w-s, started to work for the J. G. Boswell Company on May 13th, 1938, and

perhaps it would be advisable to have a photostatic copy made of this page, in as much as it also contains considerable information.

Mr. Clark: Yes. We will furnish a photostatic copy.

Mr. Mouritsen: May the record indicate that that Board's Exhibit 3 shows that Joseph Melton, M-e-l-t-o-n, first commenced to work for the J. G. Boswell Company on October 1st, 1938, and it appears it would be advisable to have a photostatic copy made of his page, in as much as it contains considerable information.

Trial Examiner Lindsay: Mark it.

Mr. Mouritsen: May the record show that Board's Exhibit 3 indicates that Harry Rickman, R-i-c-k-m-a-n, was first employed by the J. G. Boswell Company on March 4th, 1939, and that he worked continuously from that time through the pay period ending May 6th, 1939.

Do you want the amount?

Mr. Clark: No, I don't think so.

Mr. Mouritsen: May the record show that Board's Exhibit 3 shows that Vernon R-o-o-d was first employed by the J. G. Boswell Company on October 13th, 1938, and in as much as his record is rather lengthy, I think it would be advisable to have a photostat made of that page. [2183]

May the record show that Board's Exhibit 3 shows that Harold, H-a-r-o-l-d N. Smith, S-m-i-t-h, was first employed by the J. G. Boswell Company on January 7, 1939; that he worked—that for the

pay period ending January 14, 1939, he received \$24; that for the pay period ending January 23, 1939, he received \$9.20, and that no further work is indicated until the pay period ending May 6, 1939, at which time or for which period he received \$13.20.

Mr. Clark: I would like the record to show, Mr. Examiner, that these figures which are referred to by Mr. Mouritsen simply have the indication on them as to the date employed and do not say date when first employed.

I want the record to be clear on that, because if there is any explanation to that that these men have been employed on prior occasions, I don't want to be forestalled by my silence when Mr. Mouritsen states certain dates for the dates on which they were first employed.

Mr. Mouritsen: It may be understood that those are the first dates shown in Board's 3.

Mr. Clark: On the pages referred to, yes.

Trial Examiner Lindsay: Off the record.

(Discussion outside the record.)

Mr. Mouritsen: May the record show that Board's 3 indicates that John Watson, W-a-t-s-o-n, was first employed some time during the pay period ending May 5, 1938, and inasmuch as [2184] he has quite a considerable record of employment I suggest that this page also be photostated.

May also the record show that Board's 3 indicates that M. Escobedo, E-s-c-o-b-e-d-o, worked for the J. G. Boswell Company last in the year 1938

during the pay period ending November 17, 1938, and did not again work for the company until some time during the pay period ending January 7, 1939.

Mr. Clark: I would like the record to show in that connection that Mr. Escobedo continued to work for the company for the week ending January 14, 1939; January 23, 1939, and then apparently he was laid off and only worked during the week ending March 4, 1939; he worked the period ending March 11, 1939, March 18, 1939, March 25, 1939, and then apparently was laid off again and worked the week ending April 6—May 6, 1939, and of course this record indicates he has worked a considerable time prior to that.

Mr. Mouritsen: Yes.

Mr. Clark: Prior to November 17, I mean.

Mr. Mouritsen: Yes. That is correct.

May the record show that Board's 3 shows that Lawrence Galvan, G-a-l-v-a-n, last worked for the J. G. Boswell Company in the year 1938 during the pay period ending November 17, 1938; thereafter he did not again work for the company until some time during the pay period which ended January 7, 1939; that he worked for the company during the pay period ending [2185] January 14, 1939, and apparently did not work during the month of February but again worked for the company during the pay period ending March 4, 1939, March 11, 1939, March 18, 1939, and March 25, 1939; apparently did not work during the month of April but again worked for the company during the pay period ending May 5, 1939.

May the record show that Board's 3 indicates that Pete Galvan, G-a-l-v-a-n, last worked for the J. G. Boswell Company in the year 1938 during the pay period ending December 1, 1938; that for the pay period preceding December, that is the one ending November 24, 1938, he received \$8.40; for the pay period ending November 17, 1938, he received \$19.20; that after December 1st he did not again work for the company until some time during the pay period ending January 7, 1939; that he also worked during the pay period ending January 14, 1939, apparently did not work during the month of February 1939 but again worked for the company during the pay period ending March 4, 1939; during the pay period ending March 11, 1939, and during the pay period ending March 18, 1939, and that the record does not indicate that he has worked since that time.

May the record show that Board's Exhibit 3 indicates that V. C. Galvan, G-a-l-v-a-n, last worked for the company in the year 1938 during the pay period ending November 17, 1938; that he did not thereafter work for the company during the year 1938 and next was employed by the company during the period [2186] ending January 7, 1939; that he thereafter worked during the pay period ending January 14, 1939, January 23, 1939; that apparently he did not work for the company during the month of February 1939 but again worked for the company during the pay period ending March 4, 1939; that he worked during the pay period ending March 11, 1939, March 18, 1939, March 25, 1939,

and that apparently he did not work for the company during the month of April 1939 but did again work for the company during the pay period ending on May 6, 1939. [2187]

May the record show—perhaps we better have the sheet photostated, a copy of the two pages that are devoted to Ygnacio Galvan—that is spelled Y-g-n-a-c-i-o——

Mr. Clark (Interrupting): Being sheets 2 and 3. We will furnish those. They indicate that Mr. Ygnacio Galvan worked steadily through November and December, January, February, March—he worked steadily right straight through, I think.

Mr. Mouritsen: There are a number of work periods when he did not apparently receive full time.

Trial Examiner Lindsay: If you are going to have a photostatic copy——

Mr. Clark (Interrupting): We will furnish that.

Trial Examiner Lindsay: All right.

Proceed with the next one.

Mr. Mouristen: I think, Mr. Examiner, we better have photostatic copies of the two pages in Board's 3 devoted to Andrew Galvan in as much as he has an extensive record of employment with the Company.

Mr. Clark: And apparently he continued to work straight through '38 and up to the period ending May 6th of this year.

Mr. Mouritsen: Mr. Examiner, at this time I move to amend the complaint in this matter to conform to the proof adduced.

Mr. Clark: Well, do I understand that the Board is resting its case? [2188]

Mr. Mouritsen: Well, if we may have a ruling on the motion.

Mr. Clark: I have nothing to say about that, Mr. Examiner, except that I am about to make a motion to dismiss on behalf of the Associated Farmers of Kings County.

Trial Examiner Lindsay: Let us take one thing at a time.

Mr. Clark: I mean, just so long as I am reserving my right there——

Trial Examiner Lindsay (Interrupting): You will not lose that, anyway.

Mr. Clark: I understand that. I would like some indication of the proof that Mr. Mouritsen has in mind, and of the respects in which he intends to amend the complaint.

Mr. Mouritsen: Well, there have been, Mr. Examiner, I believe, a number of minor discrepancies, maybe in a date, where the date mentioned was several days from the date that was brought out in the proof. It does not bring up any new issue or in any way attempt to take the Respondent by surprise, but is merely to assure the pleading in any minor discrepancies that have been shown during the course of the trial or hearing.

Mr. Clark: I have no objection at all to that, Mr. Examiner, except general objections I have urged to the Board's case. In other words, it is quite all right with me so far as the mechanics of

amending the complaint are concerned, they may be amended to take care of any minor discrepancies in dates or things of that sort. I understand no new issues are [2189] created, and no new parties are attempted to be added.

Mr. Mouritsen: No, that is not attempted.

Trial Examiner Lindsay: With that understanding, the motion may be granted.

Mr. Mouritsen: At this time, Mr. Examiner, the Board rests.

Mr. Clark: Now, Mr. Examiner, on behalf of the Respondent, Associated Farmers of Kings County, Inc., I move for a dismissal of the complaint and charge upon which it is based, upon the following grounds:

First, that there has been no showing whatsoever, may it please the Examiner, that this Respondent is either engaged in interstate commerce, or in fact, any commerce within the meaning of the National Labor Relations Act, or that it has permitted or performed any act which, in any way, has affected or burdened interstate commerce. In short, the gist of that ground for the motion simply is that no ground of jurisdiction for the Board has been shown in this case as to that Respondent.

Trial Examiner Lindsay: Which Respondent?

Mr. Clark: The Associated Farmers of Kings County. This is just on behalf of that Respondent at this time.

Nextly, Mr. Examiner, that there is no showing whatsoever in the record that the Associated Farmers of Kings County, which the evidence shows is

a corporation, has at any time been an employer within the meaning of the National Labor [2190] Relations Act, or that the Respondent has acted in the interest of any employer who is subject to the jurisdiction of the Board;

And, lastly, Mr. Examiner, upon the ground that there is no evidence whatsoever that has been adduced during this hearing which shows any violation by the Associated Farmers of Kings County of any provisions of the National Labor Relations Act, even assuming for the sake of argument, the Board has jurisdiction and that the corporation is an employer within the meaning of the Act.

Now, I don't propose to argue that at least, your Honor, even should you permit me to do it, because I realize you have sat during, in and decided a great many of these matters. I defer to the experience that you have obviously had in this type of litigation and other litigation and simply it occurs to me that it is perfectly obvious that except for hearsay statements on the part of some of these Union members, some of the gentlemen who testified that they were members of the Union, to the effect that some unknown persons—well, some were identified persons—down at this gathering at the Boswell plant on the morning of January 30th said that it was because we, the Associated Farmers of Kings County, were doing this and that—except for that, there is no evidence at all in the record, and of course your Honor is familiar with the Consolidated Edison Company case decided by the

United States Supreme Court and the Union Stage case, I think it is in this circuit [2191] which hold that while in a hearing of this kind, the rules of evidence as we ordinarily understand them do not apply, nevertheless there must be evidence of a substantial nature upon which to base a finding. [2191-A]

Now, I would just like to call your Honor's attention to this——

Trial Examiner Lindsay (Interrupting): May we make one *correct*?

Mr. Clark: Yes.

Trial Examiner Lindsay: The words "do not apply" are not correct. The rules of evidence are not controlling.

Mr. Clark: That is what I meant to say. I was about to correct myself.

However, the cases that I referred to do hold, as your Honor knows—because I have discussed it with you during the hearing here in the presence of counsel for the Board—that irrespective of that provision in the Act there must be legal evidence on which to support a finding that is substantial evidence.

Now, there is just one further word I would like to say in that regard, and that is this: If we would overlook the hearsay nature, the only evidence, the only claim there is that the Associated Farmers of Kings County had anything to do with the events of January 30th—if we would overlook the hearsay nature of those statements coming from Mr. Martin

and Mr. Griffin, I think, and Mr. Boyd Ely, nevertheless we find a further defect there, and that is that the statements, if true, were made by persons without any authority from the corporation which is a respondent in this case. And the record will [2192] show, Mr. Examiner, that they were made by persons who in point of fact in some instances—if we assume the truth of the Martin and Griffin testimony—that they were made by persons who in point of fact were not members of the Associated Farmers of Kings County.

And I refer in that particular to Mr. Griffin's testimony, I think it is, at least it is one of the gentleman concerning the matters of January 30th, where he says that four gentlemen in chorus said, "We, the Associated Farmers of Kings County are in effect responsible for this," and he named those persons. One of them was Mr. Filcher whom the record shows was not a member of the Associated Farmers and the other one I believe was Mr. —his name has slipped me for a moment, Mr. Wilbur, Bob Wilbur, who testified here and who likewise the evidence shows was not a member of the Associated Farmers of Kings County.

So at the very best, if we even assume that these hearsay statements are true, at the very best we have people who were not members of the organization making them, laying the blame there, we will say, without any authority at all.

Now, I am most sincere in raising this motion—it isn't just for the record. I think the proceeding

should be shortened. I think the time of your Honor should not be taken up. I don't think that the respondent should be put to the expense of a defense in view of the fact that the Board has [2193] absolutely failed to, so far as I can see, make out any case whatsoever against that respondent. Certainly there is no testimony here upon which your Honor could base a finding under the decisions and even if we assume that you could, we have this further lack of authority point that I have pointed out to you with respect to which we have people who are not even members of the organization, according to Mr. Griffin and Martin, saying, "We, the Associated Farmers of Kings County are responsible for that."

Now, Mr. Boyett took the stand. He answered all of the questions put to him, and there was nothing elicited from him which would in any way involve this organization.

In response to the subpoena served upon it, we produced all of the records called for and likewise those records show, Mr. Examiner, that this organization had nothing whatsoever to do with the occurrences down there at the plant on January 30th. It would be just as reasonable to attempt to hold the Associated Farmers of Kings County because some of its members were in the crowd that morning as it would be to hold the Farm Bureau, which is a farm organization to which practically every farmer belongs, or the Grange, or the Elks, or the Knights of Columbus, or the Masons, or anybody else.

There is no authority shown; as I say, I submit that the organization should not be put to its defense, and I defer to your Honor's experience and the fact that I know you have kept [2194] close track of the evidence as it went in this case.

Without any argument at all, I would like to make a further motion for the record and that is a motion to dismiss on behalf of the Corcoran Telephone Exchange on the ground that no jurisdiction of the Board has been established in that the evidence falls short of showing that that corporation is engaged in interstate commerce or in any business substantially affecting interstate commerce or in which a labor situation could affect interstate commerce within the decision of that situation in the Santa Cruz Packing Company case. And a further ground for that motion to dismiss is that Mrs. Dunn herself testified that she was not a member of any labor organization, had never engaged in any union activities, and so I take it that any redress so far as she is concerned is beyond the scope of the Act.

I will submit those two motions, your Honor.

Trial Examiner Lindsay: Do you have anything to say, Mr. Mouritsen?

Mr. Mouritsen: Well, with reference to that, your Honor, the first motion of counsel, first, that it has not been indicated that the Associated Farmers were in any way implicated, I should like to direct the Examiner's attention to the fact that first these men identified themselves as Associated

Farmers. We had present a director—as the exhibit will show—a director of the corporation, the Associated Farmers [2195] of Kings County, Inc., who has also been shown to be one of the leaders of that movement.

The fact that they identified themselves as Associated Farmers—and I am sure that the Trial Examiner observed the demeanor of these witnesses, including the director of the Associated Farmers upon the stand, and that his denial of any of the incidents or any responsibility for the incidents that took place was far from convincing.

In that regard, the people present also testified that they had no cotton themselves stored in the Boswell Company so that the only way they could have been acting was in the interests of the Boswell Company. It has been clearly demonstrated that such company is clearly subject to the jurisdiction of the Board in that it engages in interstate commerce and that a dispute—and that in actuality a labor dispute has occurred which has resulted in considerable curtailment and has interrupted interstate commerce.

In view of those facts, Mr. Examiner, I think that such connection has been established that the Associated Farmers are connected—have been connected up with the J. G. Boswell Company, have been shown to be employers within the meaning of the Act, and as such subject to the jurisdiction of the Board.

With reference to the Corcoran Telephone Ex-

change, the testimony shows that Mr. Glenn discharged the complainant in [2196] that matter, or the one who signed the charge, due, according to the testimony, to pressure that was put upon it. We have shown that Mr. Glenn's interests are very closely associated with those of the J. G. Boswell Company; that he is very much in debt to that company, that his telephone business to a large degree is dependent upon the business and good will of the J. G. Boswell Company.

Mr. Clark makes much of the fact that Mrs. Dunn was never a member of a labor organization. I think that a closer reading of Section 8(3) of the Act will indicate to Mr. Clark and to any other observer the fact that it is not necessary for a complaining witness to be a member of a labor organization, but only that such person be discharged for the purpose of encouraging or discouraging membership in a labor organization.

And upon those grounds and that short argument, Mr. Examiner, it is the Board's position that the motion should not be granted but that the hearing proceed and that the respondent be given opportunity to put on their defense.

Trial Examiner Lindsay: The motion is denied, and you may have an exception.

Mr. Clark: Now, may we have a short recess, your Honor? It is almost 3:00 o'clock.

Trial Examiner Lindsay: Yes. What do you *what*? About 20 minutes?

Mr. Clark: Yes, I would like that. [2197]

Trial Examiner Lindsay: You may have half an hour if you wish.

Mr. Clark: Twenty minutes is enough, I think.

(At this point a short recess was taken, after which the proceedings were resumed as follows:) [2198]

Trial Examiner Lindsay: Hearing called to order.

Mr. Painter: Shall we proceed?

Trial Examiner Lindsay: Yes.

Mr. Painter: Mr. Patten.

T. W. PATTEN

a witness called by and on behalf of the Respondent, Associated Farmers of Kings County, Inc., being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Painter) What is your full name, please? A. T. W. Patten.

Q. Where do you reside, Mr. Patten?

A. At the Kings County Land-Cattle Company, 11½ miles West of Lemoore.

Q. What is your business?

A. Ranching.

Q. What is the name of the ranch that you operate?

A. Well, it is known as the Kings County Land and Cattle Company.

(Testimony of T. W. Patten.)

Q. Is it known by any other name?

A. Oh, it was formerly the old Heinlen ranch.

Q. Were you operating that ranch in January of this year?

A. We were.

Q. And you are still operating it?

A. Yes. [2199]

Q. Do you know Russel Slaybough?

A. I do.

Q. Did you know him in January of this year?

A. I did.

Q. Do you recall seeing him in the latter part of January of this year?

A. He was on our ranch in the latter part of January.

Q. On the day that you saw him, do you recall when he got there?

A. Yes. It was in the forenoon, I would say, between 9:30 and 10:00.

Q. And how long did he stay on your ranch on that day?

A. About two or two and a half hours; shortly after noon that he left.

Q. Was anyone with him?

A. Yes, Mr. George Bell and his wife, Mrs. Slaybough.

Q. And do you remember what day of the week that was?

A. Yes, it was on a Monday.

Q. Now, have you any way of fixing the date that was, that he was there?

(Testimony of T. W. Patten.)

A. Well, we were on a horse trade, horse deal. I had a colt that he was looking at and we took the colt to Mr. Bell's stable for training on February 2nd, so I would presume it would be about the Monday prior to that date.

Q. That would be the Monday prior to February 2nd? [2200]

A. Prior to February 2nd.

Q. What did you do there at the ranch while they were there?

A. Well, he looked the colt over, and we saddled the colt. He rode the colt. It was raining in between, and we discussed the various points of the colt.

Q. That was later, on February 2nd, then sent over to Mr. Bell's stable, is that it?

A. Over to Mr. Bell's stable.

Mr. Painter: That is all.

Cross Examination

Q. (By Mr. Mouritsen) Mr. Patten, have you ever talked with Mr. Slaybough since you were on this horse deal? A. Yes, various times.

Q. And have you ever talked with him about the testimony that you have given here?

A. Yes. He was over last Sunday—I believe it was last Sunday—checking up to see if I could recall this deal we were on.

Q. Could we fix the date? What was the date of last Sunday?

A. Last Sunday was the 2nd, was it not?

(Testimony of T. W. Patten.)

Mr. Clark: The 4th of June.

Mr. Mouritsen: The 4th of June.

Q. Was that the first time that you ever talked with him about your testimony here, that you have given here on the stand? [2201]

A. The first time.

Q. Did Mr. Slaybough say anything about his having testified here?

A. Not that I recall.

Q. Well, didn't he tell you that he had testified, at that time?

A. Well, he may have. I don't know what his testimony was. He said that there was some controversy as to his whereabouts, and he wanted to show where he was on that date.

Q. Where were you when Mr. Slaybough talked to you about this?

A. On our ranch at Lemoore.

Q. That is the same ranch where you were looking at the horse before?

A. That is where I live, yes, sir.

Q. Where did you have your conversation with Mr. Slaybough?

A. About the horse deal or——

Q. (Interrupting): No, on this later occasion?

A. At our ranch.

Q. Was anyone else there when you talked with him? A. Last Sunday?

Q. Yes.

A. Yes, his attorney, Mr. Painter. I don't

(Testimony of T. W. Patten.)

know whether he is his attorney. [2202]

Q. And did Mr. Painter also take part in the conversation?

A. Yes. He wanted to know if I could recall the date that Mr. Slaybough was on our ranch regarding this horse deal.

Q. Now, will you tell us what Mr. Slaybough said to you on that occasion? The first thing he said to you, if you can recall.

A. I can't recall the first thing that he said, no, but he asked if I had some way of determining the date that he was there; and I had, because I had a bill as to when we took the horse over to the training stables, an incident came up that I recall that he was at our ranch on the Monday prior to my taking the horse over, because he did not take the colt, and for that reason I took it to the stables for training.

Q. Now, will you tell us what further was said at this conversation that you had with him last Sunday.

A. He wanted to know if I would be willing to come down here on his behalf if it was necessary, and I said I would.

Q. Did he ask you to back his story up?

A. No, he didn't.

Mr. Painter: Objected to as incompetent, irrelevant and immaterial.

Trial Examiner Lindsay: I think the answer is in.

(Testimony of T. W. Patten.)

Mr. Painter: May I have the answer read?

Trial Examiner Lindsay: Yes. Read the answer.

(The answer referred to was read by the reporter, as set [2203] forth above.)

Q. (By Mr. Mouritsen) Didn't he ask you to corroborate the fact that he was there on that prior occasion? A. Yes.

Mr. Painter: Object to that as incompetent, irrelevant and immaterial.

Trial Examiner Lindsay: He may answer.

The Witness: He asked if I could fix in my mind or if I had some way of telling what date he was at the ranch, and I had for various different things that came about that brought the fact to my mind.

Q. (By Mr. Mouritsen) And do you recall anything further that was said at that time? That is, on this occasion last Sunday?

A. Nothing.

Q. Now, Mr. Patten, you are certain that Mr. Slaybough at that time didn't tell you that he had testified prior to that time, is that correct?

A. I wouldn't say that he had. I don't recall him telling me he had testified.

Q. You don't recall? I didn't get your answer.

A. Yes.

Q. Now, I believe you stated that the only ones present on that occasion were, on this prior occasion when Mr. Slaybough was at your ranch, was

(Testimony of T. W. Patten.)

Mrs. Slaybough, and Russell Slaybough, and [2204]
Mr. Bell, is that correct?

A. Well, they were with Mr. Slaybough at the time. However, on the ranch there were Mr. Craig, Mr. A. M. Craig, and our horse breaker there, Segundo Lopez. He saddled the horse.

Q. And there weren't any children there with Mr. Slaybough and his wife? Is that correct?

A. I don't believe so. I don't recall any, no. There were no children with Mr. Slaybough.

Q. I beg your pardon?

A. There were no children with Mr. Slaybough. Mr. Mouritsen: That is all.

Mr. Painter: That is all.

Thank you, Mr. Patten.

(Witness excused.)

Mr. Painter: Mr. Bell.

GEORGE W. BELL

called as a witness by and on behalf of the Associated Farmers of Kings County, Inc., having been first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Painter) What is your name, please? A. George W. Bell.

Q. And where do you reside?

A. Tulare. [2205]

Q. What is your business?

(Testimony of George W. Bell.)

A. Horse business, livestock, and auctioneering.

Q. Are you acquainted with Russell Slaybough?

A. I am.

Q. Did you know him in January of this year, 1939? A. I beg your pardon?

Q. Did you know Russell Slaybough in January of this year? A. Yes, sir.

Q. Do you recall seeing him at any time the latter part of January of this year?

A. Yes, sir.

Q. Where did you see him?

A. Well, I saw him in my barn on the latter part of the month, on the 29th, on Sunday; and I arranged with him to meet me to go to the Heinlen ranch on the following morning and I met him and we went to the Heinlen ranch. I called the Craig ranch, A. M. Craig, and A. W. Craig—they are brothers.

Q. Where did you arrange to meet Mr. Slaybough on the following morning?

A. I met him just west of Guernsey Station right at the intersection of what I would call the Stratford-Corcoran-Guernsey Road, where the Corcoran Road would come into the Stratford and Guernsey Road.

Q. How did you get to that place?

A. I drove my car there.

Q. Was anyone with Mr. Slaybough when you met him there? [2206]

A. His wife was with him.

(Testimony of George W. Bell.)

Q. What did you do after you met Mr. Slaybough and his wife?

A. I locked my car and left it there, and got in with them and we continued on to the Craig ranch, to the Craig Brothers.

Q. What time did you meet Mr. Claybough at the Guernsey intersection?

A. I was to meet him at 9:00 o'clock. I was ahead of time, and I—after I got started his wife looked at his watch, and it was between 9:00 and a quarter after 9:00.

Q. Did you drive directly to the Heinlen ranch?

A. Directly there, yes.

Q. How long did you stay at the Heinlen ranch?

A. From the time we arrived there and from the time we got away and got back to Lemoore, it was practically lunch time, because we looked at the restaurants for lunch, and we went over to Hanford and ate at Peden's Cafe there that noon, at Hanford.

Q. That was the 30th of January, on Monday?

A. That was the 30th of January, on Monday.

Q. What did you do at the Heinlen ranch with Mr. Slaybough that morning?

A. In what way?

Q. Well, what was the purpose of going there, Mr. Bell?

A. I had asked him to go over there and look at a brown horse that Craig Brothers had with a view in mind of exchanging horses with him for

(Testimony of George W. Bell.)

a horse that I had sold to Russel possibly [2207] a year before.

Q. Now, after you ate lunch at Peden's, where did you go?

A. We returned back down the Hanford and Guernsey road until we came to my car, and they turned towards Corcoran and I got into my car and went to Tulare.

Q. Were you—withdraw that.

About what time did you get back to your car there?

A. As best I remember, it was around 2:00 o'clock.

Q. And were you with Mr. and Mrs. Slaybough all of the time from about 9:00 o'clock in the morning until the time that you returned to your car?

A. Yes, all the while.

Q. Did you meet anyone there when you got to your car, or did you see anyone that you knew as you were there at your car, after you had been at the Heinlen ranch?

A. While we sat there in the car and talked, a car came from the West, and we recognized the driver of that car, but there was no one there at my car at the time I drove up.

Q. I see.

Who was the driver of this car that you recognized coming from the West?

A. Brice Sherman.

Q. And did Brice Sherman stop?

(Testimony of George W. Bell.)

A. Not at that time.

Q. Did he stop at any time while you were there? [2208]

A. He told—as my car and Russel's was headed West, and Brice was coming from Stratford, he was going East, and he drove down towards Guernsey a short ways and turned and drove back and drove up alongside of the car of Slaybough's that I was in, and we stopped and talked.

Q. Let me interrupt a moment.

You say he was coming from Stratford. I assume you mean from the direction of Stratford?

A. Yes. I don't know where he had been, or anything about that.

Q. Did you have any conversation with Mr. Sherman on that occasion?

A. We visited. I had known Brice for a long time. I would say for maybe twenty years. We visited a while.

Q. Was there any discussion of anything that had happened on the morning of that day?

A. There was. [2209]

Q. What, in substance, was said?

A. When Brice drove back it was raining and he left his window of his car down a little bit. He looked in. He said, "Hello, there."

We talked. "I thought maybe you fellows out here was kind of watching the corners. You had quite a time down there this morning."

Russell said, "Is that so?"

(Testimony of George W. Bell.)

He said, "Yes."

Russell never heard anything about it. He didn't until he got here and heard about it.

"I thought maybe you would know something about it."

He said, "Doggone, I didn't know anything about that."

Then he went on and told, he told what he had heard, they had had trouble here in Corcoran that morning, some extent; didn't concern me. It wasn't my playhouse.

Mr. Mouritsen: May I have the question read back in its entirety.

Trial Examiner Lindsay: Yes.

(The record referred to was read by the reporter, as set forth above.)

Mr. Mouritsen: Thank you.

Q. (By Mr. Painter) Did Brice Sherman say whether or not he had been down to Corcoran that morning?

A. No, he was not. As I understand Brice—that is all I [2210] had—he had got this in Hanford.

Mr. Mouritsen (Interrupting): I object to this unless the witness states what was said.

Q. (By Mr. Painter) Just state whether he said that he hadn't been down here.

A. No, he had not.

Q. All right.

What did you do after that?

A. Well, Brice drove on away and Russell and

(Testimony of George W. Bell.)

I continued talking about a horse deal for a few moments. They stayed in their car. I got out and went home.

Q. Subsequently to this day did you have that horse taken over to your stables, after that day?

A. Yes. He was brought to the barn on the Thursday following.

Q. That would be February 2nd?

A. Yes, sir.

Mr. Painter: That is all. You may cross examine.

Cross Examination

Q. (By Mr. Mouritsen) Now, as I understand your testimony, Mr. Bell, you went to see Russell Slaybough on January 29th about this horse deal, is that correct?

Mr. Painter: Just a moment. That isn't a statement of his testimony.

Trial Examiner Lindsay: No, that is not his testimony. [2211] As I understand this testimony, Slaybough was down to his barn on the 29th.

The Witness: That is right.

Trial Examiner Lindsay: Let us be cautious about the testimony.

Q. (By Mr. Mouritsen) In any event, the first conversation you had with Slaybough about the horse was on the 29th of January, is that correct?

A. Yes, sir.

Q. And now what was the testimony in that regard, Mr. Bell? Did Mr. Slaybough come to you,

(Testimony of George W. Bell.)

come to see you, or did you come to see him about the horse?

A. He was over at the barns. Russell visited the barn. I sold him horses in the past; would visit back and forth. He was there. I brought this up to him, about making an exchange for Craig's horse for a horse that he had.

Q. In other words, he has been at your barn on a number of different occasions? A. Oh, yes.

Q. To see you about horses, is that correct?

A. Yes.

Q. Can you give us approximately how many occasions in the month of January 1939 he saw you about horses?

A. No, I don't know that I could.

Q. Well, was it as many as six or seven? [2212]

A. Well, people are dropping in there and Russell is in and out as well as others and rather than to keep an itemized account of every individual, I don't think I would be in a position to say. I wouldn't do it.

Q. In other words, he might have been there as many as——

A. (Interrupting) He could have been there a half a dozen times.

Q. Might have been there as many as fifteen different times?

Mr. Painter: I object to this as argumentative.

Mr. Mouritsen: Well now, Mr. Examiner——

Mr. Painter (Continuing): Asked and answered.

(Testimony of George W. Bell.)

Trial Examiner Lindsay: He may answer.

Mr. Painter: Would you read the question?

Mr. Mouritsen: I will repeat the question.

Q. He may have been there as many as fifteen, on fifteen different occasions during the month of January 1939?

A. Well, I wouldn't say he had been there that often. That would be every other day. I don't think he was there that often.

Q. But this occasion on the 29th of January 1939, you recall specifically, is that correct?

A. Yes, sir.

Q. Now, did he have a conversation with you at that time?

A. Oh, we talked about going over to the Craig ranch and looking at this horse. [2213]

Q. Was anyone else present, just you and Slaybough?

A. Oh, it is hardly possible there could have been at the time we had the conversation.

Q. Will you give us the substance of what Slaybough said to you and what you said to Slaybough on that occasion?

Mr. Painter: Objected to as incompetent, irrelevant and immaterial. This is on an entirely different track.

Mr. Mouritsen: It is to test the witness' recollection.

Trial Examiner Lindsay: He may answer.

The Witness: I asked him if he would be in-

(Testimony of George W. Bell.)

terested in disposing of his horse that I had in my barn at that time. He didn't know whether he would be or not and I told him Craig brothers would like to have the horse.

Q. (By Mr. Mouritsen) What did Slaybough say to that?

A. He said, "Well, I don't know." He said, "We think a lot of him."

"They have a nice horse over there and I think you might be able to make a deal whereby you could do yourself some good."

He wanted to know if I had seen the horse and I had and he was anxious then that I might go with him to look at the horse again, because if he got the horse he would expect me to help to dispose of it. That is when we made the arrangement to meet on Monday morning. [2214]

Q. And then you went down the next day, didn't you, after talking about the horse on the 29th, you went down the next day to see the horse, is that correct?

A. We went to the ranch Monday morning, yes, sir; the next Monday morning.

Q. And you have given us now all of the conversation that you recall as taking place on the 29th of January between yourself and Slaybough, is that correct? [2215] A. I would say so.

Mr. Mouritsen: May I have a moment, Mr. Examiner, please?

Trial Examiner Lindsay: Yes.

(Testimony of George W. Bell.)

(Conference between counsel.)

Q. (By Mr. Mouritsen) Now, Mr. Bell, Mr. Slaybough, on page 1657 of the transcript——

Mr. Clark (Interrupting) Just a moment, please.

Trial Examiner Lindsay: What page?

Mr. Mouritsen: 1657 of the transcript.

He testified——

Mr. Clark (Interrupting): Just a minute, please. What line, Mr. Mouritsen?

Mr. Mouritsen: Beginning at line 19, in answer to the question beginning on line 17, by Mr. Walsh.

“Q. Mr. Slaybough, did we fix the time at which you arrived at the Heiman ranch——”

And that is now, as I understand it, the Heinlen ranch. Isn't that correct?

A. I don't know how it is spelled.

Q. And then the answer was, beginning on line 19:

“No, we did not. I imagine that would be more or less difficult. I—the previous week I had made an appointment with Mr. Bell to meet him at Guernsey at 9:00 o'clock, as I remember, and it would take a half an hour or three-quarters of an hour, even possibly more than three-quarters of an hour [2216] to drive from the Heiman ranch.”

Now, Mr. Slaybough didn't make the appointment to go to the Heinlen ranch as much as a week in advance of the time that he spoke to you about it, did he?

(Testimony of George W. Bell.)

Mr. Painter: Just a moment. I will object to it as argumentative, incompetent, irrelevant and immaterial.

Trial Examiner Lindsay: He may answer.

Mr. Painter: Furthermore, it is a mis-statement of the record because Sunday is the previous week.

Mr. Mouritsen: I am not quoting from the record at all. I am asking this witness a question.

The Witness: We could have talked about this as testified there. As I stated, he was there at different times. We could have talked, but as to making an absolute appointment, I rather think we made that on the day before we went over.

Q. Well, in other words, you might have had a conversation with Mr. Slaybough on some occasion other than January 29th, 1939, is that correct?

A. Well, I have stated that he was there at different times.

Q. And isn't it possible——

A. (Interrupting) Everybody that comes I try to visit. I don't want to mistreat anybody.

Q. Isn't it possible, Mr. Bell, that the conversation which you have described as taking place on January 29th, 1939, could have taken place at one of these prior occasions and some other [2217] day?

A. Well, I think I have it as I remember.

Mr. Clark: May I have that answer, please, Mr. Examiner?

Trial Examiner Lindsay: Yes.

(Testimony of George W. Bell.)

(The record referred to was read by the reporter, as set forth above.)

Q. (By Mr. Mouritsen) But it is possible, is it not, that January 29th, 1939, was not the date on which the conversation took place; it may have been some other day?

Mr. Painter: I will object to this as argumentative, asked and answered.

Trial Examiner Lindsay: He may answer.

Mr. Painter: May I have the question read back?

Trial Examiner Lindsay: Yes, read the question.

(The record referred to was read by the reporter, as set forth above.)

The Witness: (Pause.) Well, I could be mistaken.

Mr. Mouritsen: That is all.

Redirect Examination

Q. (By Mr. Painter) Have you any explanation that you want to add to that answer? Did you start to say something?

A. Other than this, that when Russel and I began our horse business—at different times we visited back and forth all along, and talked along horse lines, and I said a while ago that we may have talked about this prior to that one time, but [2218] only a short time, because the interest that Mr. Craig manifested for the Slaybough horse, so it couldn't have been a period of months or anything

(Testimony of George W. Bell.)

like that. It was just temporary and close to it.

Q. You have records, have you not, Mr. Bell, as to the date that the horse actually arrived there?

A. I do have, yes, sir.

Q. And it is by means of that, together with the meeting with Brice Sherman that you are able to fix the date?

Mr. Mouritsen: I object to this as leading and suggestive, improper redirect examination.

Trial Examiner Lindsay: You may reframe your question.

Q. (By Mr. Painter) Does that record assist you in fixing the date that you went over to the Heinlen ranch?

A. Yes, because of the arrangement that I made with Mr. Craig for the delivery of the horse or for the bringing over, you might say, of the horse to my place, and the horse was brought there on the 2nd of the month, and he is still in my possession, still in that barn.

Mr. Painter: That is all. Thank you.

Mr. Mouritsen: No further questions.

Trial Examiner Lindsay: I have one.

Do I understand that you have Slaybough's horse over there, too?

The Witness: Yes, sir. [2219]

Trial Examiner Lindsay: And what did you mean when you said "look at the horse again," in your direct testimony?

The Witness: What is that?

(Testimony of George W. Bell.)

Trial Examiner Lindsay: What did you mean when you said "look at the horse again," in your direct testimony, referring——

Mr. Painter (Interrupting): Just a moment.

Trial Examiner Lindsay (Continuing): Just a moment ——referring to your conversation with Mr. Slaybough at your barn?

Mr. Painter: I don't want your Honor to be mistaken about the testimony either. I think he asked Mr. Bell to look at the horse again in the way he testified on his direct examination.

Trial Examiner Lindsay: That is what I am asking him in my question.

Slaybough asked him again, so he stated on his direct testimony——

Mr. Painter (Interrupting): Asked Mr. Bell to look at the horse again.

Mr. Clark: Let us have it read back, Mr. Examiner, if there is any doubt about it.

Trial Examiner Lindsay: Just a moment, please.

My question is: What did you mean when you said that Mr. Slaybough asked you to look at the horse again?

Is that plain enough?

Mr. Painter: Yes. [2220]

Trial Examiner Lindsay: I am sure that is the way the question was.

The Witness: Well, I have been asked or called upon to look at horses, various horses, for different people when they had the thought in mind of mak-

(Testimony of George W. Bell.)

ing a purchase or obtaining title to the property, and it was because of that that I took it that Russel wanted me to look at this horse in behalf of him. I had no money invested in any way whatsoever.

Trial Examiner Lindsay: You didn't own the horse?

The Witness: No, sir, nor a hair on it.

Trial Examiner Lindsay: All right.

Did you mean by that that you and Russel Slaybough had seen the horse together before?

The Witness: No, I had.

Trial Examiner Lindsay: You had?

The Witness: But he had not.

Trial Examiner Lindsay: Oh.

The Witness: He may have, but I wouldn't know anything about it. He asked me to go and look at the horse again with him.

Trial Examiner Lindsay: I see. That is all.

Mr. Painter: That is all. Thank you, Mr. Bell.

(Witness excused.)

Mr. Painter: Mr. Degnan. [2221]

J. H. DEGNAN

a witness called by and on behalf of the Respondent, Associated Farmers of Kings County, Inc., being first duly sworn, was examined and testified as follows:

Mr. Painter: Mr. Degnan, as well as the last two

(Testimony of J. H. Degnan.)

witnesses, were called on behalf of the Respondent,
Associated Farmers.

Direct Examination

Q. (By Mr. Painter) Where do you live, Mr.
Degnan? A. Hanford.

Q. What is your business?

A. I run a machinery and truck business.

Q. And where is your place of business?

A. 602 East Sixth Street, Hanford.

Q. Was your place of business located at that
same place in January of this year?

A. Yes, sir.

Q. What is your—I will withdraw that question.

Were you acquainted with Brice Sherman in
January of this year? A. Yes.

Q. Was he employed by you? A. Yes.

Q. Was he employed by you on the 30th of
January? A. Yes.

Q. Of this year? [2222] A. Yes, sir.

Q. Do you recall, Mr. Degnan, hearing about an
occurrence down here at Corcoran when certain
pickets were asked to leave the Boswell plant?

A. Yes, I do.

Q. And with that date in mind, which has been
fixed as January 30th, can you state whether you
saw Brice Sherman on that date?

A. Yes, I did, because we hold our meetings——

Mr. Mouritsen (Interrupting): I object to this
as a voluntary statement on the part of the witness,

(Testimony of J. H. Degnan.)

and not in answer to any question.

Trial Examiner Lindsay: The answer is Yes, is that right?

The Witness: That is right.

Mr. Painter: All right.

Q. When did you see him first on that day?

A. It was around 8:00 o'clock in the morning.

Q. And where did you see him?

A. In our office.

Q. And how long did he remain at your office that morning?

A. Well, that morning it was around noon anyway before he left there.

Q. And he was around the office during all the morning, then, between 8:00 o'clock and noon, is that correct? A. Yes. [2223]

Q. On that day did you hear anything about this incident down here?

A. Yes, I did. There were numerous farmers——

Mr. Mouritsen (Interrupting): I object to the voluntary statement of the witness as not responsive to the question.

Q. (By Mr. Painter) Did you hear that certain men had asked the pickets to leave the Boswell plant? A. Yes.

Q. On that day?

And on that whole morning, then, Brice Sherman was working for you in your establishment, is that correct? A. Yes.

Mr. Painter: That is all.

(Testimony of J. H. Degnan.)

Q. Where is your office located?

A. 602 East Sixth Street, Hanford.

Mr. Painter: That is all.

Cross Examination

Q. (By Mr. Mouritsen) Now, in response to Mr. Painter's question, which is somewhat ambiguous as to whether you heard about the incident on that day, can you clear that up as to whether you did, as the day when you did hear about the incident at Corcoran?

Mr. Painter: Just a moment. I strike out this remark about ambiguous questions and request that Mr. Mouritsen be directed to reframe his question. [2224]

Mr. Mouritsen: I will ask to have the question re-read. It was ambiguous to me. I couldn't determine whether he meant on which day the witness heard, or which day the incident occurred.

Trial Examiner Lindsay: Read the question.

(The record referred to was read by the reporter, as set forth above.)

Trial Examiner Lindsay: He may answer that question.

The Witness: Will you repeat that question once more, please?

Mr. Mouritsen: I will reframe it.

Q. Can you fix that definitely as to whether you heard that the men were run out on that day, or that they left on that day, or that you heard about it on that day?

A. Yes, I can.

(Testimony of J. H. Degnan.)

Q. Well, now, would you please indicate what the true situation in that respect is?

A. What do you mean by that question?

Q. Well, when did you hear about—strike that.

When did you—on what date was it that you understood that these pickets were requested to leave the plant?

Mr. Painter: I will object to that as incompetent, irrelevant and immaterial, beyond the scope of the direct examination. He hasn't testified any date except by an incident.

Trial Examiner Lindsay: He may answer, if he knows. [2225]

The Witness: Will you repeat that question once more?

Mr. Mouritsen: Read the question.

Trial Examiner Lindsay: Read the question.

(The question referred to was read by the reporter, as set forth above.)

The Witness: It was on a Monday morning, on the end of January.

Q. (By Mr. Mouritsen) And that was—it was on a Monday morning that you understood they were requested to leave the plant?

A. That is correct.

Q. When did you learn about that incident?

A. Oh, it was late in the morning sometime—a farmer came in there and gave us the information. There was considerable talk at all times regarding

(Testimony of J. H. Degnan.)

it at Hanford. That was why I was particularly interested in the episode that was happening here amongst the farmers and business men of Hanford.

Q. He came in in the morning, did you say?

A. That is right.

Mr. Painter: He said in the late morning.

Mr. Mouritsen: I will ask the witness.

Mr. Painter: I have the right to have the record properly stated.

Trial Examiner Lindsay: Just a minute. Just watch the testimony. Let's understand one thing: Proceed in an orderly [2226] manner.

Mr. Mouritsen: May I have the question read?

Trial Examiner Lindsay: Yes. Read the question.

(The question referred to was read by the reporter, as set forth above.) [2227]

The Witness: In the late morning I said.

Q. (By Mr. Mouritsen) And do you recall who it was?

A. No, I don't. I didn't particularly say one individual, either.

Q. Well, I am sorry. I thought you said a farmer came in and told you about it in the late morning. Is that an incorrect statement of your testimony? A. That is.

Q. And you don't recall having made that statement at all, is that correct?

A. I renall making that statement, but it is incorrect. I didn't say it was one individual farmer.

(Testimony of J. H. Degnan.)

There were numerous farmers in the place of business at the time and there was a discussion at that time that the pickets had been dispersed at Boswell's. I couldn't identify the individual that brought it in, but it was gossip or talk at that time in the place of business that that was what happened.

Q. How do you fix the date on which you heard that discussion about the dispersal of the pickets?

A. In other words, on a Monday morning it happened, which I can easily identify, because I was very much interested in the particular case; and it was the end of the month for us ordinarily, when we always have our men in there. Mr. Sherman was there that morning, and naturally he, being from Corcoran here, he was interested in the particular outcome [2228] of this case here. That is how I happened to remember it at that time and, of course, I heard reports over the radio and newspapers which—we don't have those episodes very often here in this country and this is a case that I remember.

Mr. Mouritsen: Nothing further.

Trial Examiner Lindsay: Any other questions?

Mr. Painter: You gave us the address of your office. Is that in Hanford?

The Witness: It is in Hanford, yes.

Mr. Painter: That is all. Thank you very much.

(Witness excused.)

Mr. Painter: Mr. Mackey.

JOSEPH ALEXANDER MACKEY,

called as a witness by and on behalf of the Associated Farmers of Kings County, Inc., having been first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Painter) What is your name, Mr. Mackey? A. Joe Alexander Mackey.

Q. What is your address, Mr. Mackey?

A. Route 1, Corcoran.

Q. What is your business? A. Farming.

Q. Now, were you farming in January of this year? [2229] A. Yes, sir.

Q. Are you a member of the Associated Farmers? A. I am.

Q. Were you present at the Boswell gin on January 30th, the morning of January 30th, when certain pickets were asked to leave?

A. No, sir.

Q. Did you know anything about it before it occurred? A. I did not.

Q. Where were you on that occasion?

A. I was out on the ranches some place.

Q. Did you go out to Salyer's in the morning before that occurred? A. No, sir.

Mr. Painter: That is all.

Mr. Mouritsen: No questions.

Mr. Clark: May I ask a further question, Mr. Examiner?

Trial Examiner Lindsay: Yes.

(Testimony of Joseph Alexander Mackey.)

Mr. Clark: Have you ever been down at the plant there on any occasion where a crowd gathered to disperse the pickets?

The Witness: I have not.

Mr. Mouritsen: There is one question, if I may.

Cross Examination

Q. (By Mr. Mouritsen) Were you present at a barbecue at [2230] Salyer's ranch that night?

A. I was.

Q. You were there? A. Yes.

Q. How were you notified of that barbecue?

A. Mr. Riley notified me.

Q. Mr. who? A. Riley.

Q. Mr. Forrest Riley?

A. Mr. Forrest Riley.

Q. Do you recall when he told you about that?

A. No, I don't recall the exact time.

Q. Could you fix the date? Was it the day before the barbecue occurred?

A. No, it was the day of the barbecue. I waited tables that night.

Mr. Clark: May I have the last answer there, please?

Trial Examiner Lindsay: "I waited tables that night." Is that your answer?

The Witness: Yes.

Q. (By Mr. Mouritsen) Do you recall where you were when Forrest Riley told you of the barbecue?

A. No, I don't. I don't recall where I was.

(Testimony of Joseph Alexander Mackey.)

Q. And I believe you stated that it was the day that the barbecue occurred that he spoke to you about it? Is that correct? [2231] A. Yes.

Q. And you recall that Forrest Riley told you, but you don't recall where he told you?

A. No.

Q. Do you recall whether anyone else was present there when he told you that?

A. No, I don't.

Q. Do you recall—strike that.

What did he say to you about the barbecue?

Mr. Painter: I object to this as incompetent, irrelevant and immaterial, and hearsay as to all respondents.

Trial Examiner Lindsay: He may answer.

The Witness: He told me to go down there and help out.

Q. (By Mr. Mouritsen) Well, did he say anything further than that?

A. That is all. That is all I recall.

Q. Do you work for Mr. Riley?

A. Yes, sir.

Q. Did you understand that you were to go down and wait on tables when he told you to go down and help out? A. No.

Q. Now, you were present—strike that.

Were you present when there were any speakers made talks?

A. I beg your pardon?

Q. Were you present during any speeches that took place [2232] at that barbecue?

(Testimony of Joseph Alexander Mackey.)

A. I waited tables.

Q. Did you hear any of the speakers talk at that barbecue?

A. I don't remember. I was in and out. I was in and out of the dining room and the tables.

Q. They did have speakers, is that correct?

A. Yes.

Q. And do you recall whether a man named Harry Lee Martin was there that night as a speaker?

A. I couldn't swear to it. I don't remember.

Mr. Mouritsen: I think that is all.

Mr. Painter: Mr. Mackey, you own your own ranch in addition to working for Mr. Riley, is that correct?

The Witness: Yes, sir.

Mr. Painter: That is all.

One further question.

Do you recall whether or not you heard about this barbecue in the morning or afternoon?

The Witness: I believe it was in the afternoon.

Mr. Painter: That is all.

Thank you.

Mr. Mouritsen: Is there anything that occurred to refresh your recollection in between the time I asked you when you were notified about it and——

Mr. Painter (Interrupting): I object to this question. [2233] He wasn't asked whether it was morning or afternoon.

Mr. Mouritsen: I will submit it.

(Testimony of Joseph Alexander Mackey.)

Trial Examiner Lindsay: You may answer.

Read the question.

(The question referred to was read by the reporter, as set forth above.)

The Witness: No, I believe not.

Mr. Mouritsen: Nothing further.

Mr. Painter: That is all. Thank you.

(Witness excused.)

Mr. Painter: Mr. Clark.

Trial Examiner Lindsay: Off the record.

(Here followed discussion outside the record.)

Trial Examiner Lindsay: On the record.

CASSIUS C. CLARK,

called as a witness by and on behalf of the Kings County Associated Farmers, Inc., having been first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Painter) What is your full name, Mr. Clark.

A. Cassius C. Clark.

Q. And where do you live? A. Hanford.

Q. In what business are you engaged? [2234]

A. Salesman for the Cousins Tractor Company.

Q. And out of which office do you operate?

(Testimony of Cassius C. Clark.)

A. I operate out of the Hanford office, and also the Corcoran office.

Q. I see.

Are you a member of the Associated Farmers?

A. No.

Q. Were you present at any time at the Boswell gin when certain pickets were asked by a group of men to leave? A. No.

Q. Did you know about any such plan before it occurred? A. No.

Q. When did you first learn about it?

A. I judge it would be about 9:30 in the morning after I saw cars coming back and asked—I should say cars going by our place of business—and I asked somebody what it was all about and that was the first time I knew about it.

Q. Were they going toward the gin or coming away from the gin?

A. They were coming away from the gin.

Q. And that was the first you heard of it?

A. Yes, sir.

Mr. Painter: That is all.

One further question.

Q. Where were you when you saw those cars? [2235]

A. In our place of business in Corcoran.

Q. Who was with you, if anyone?

A. Mr. Pineal who works for our company.

Q. Where is the place of business located?

A. I believe the correct address is 832 Whiteley Avenue, Corcoran.

(Testimony of Cassius C. Clark.)

Q. Is that the main street in Corcoran?

A. Yes, sir.

Mr. Painter: That is all.

Cross Examination

Q. (By Mr. Mouritsen) Can you tell us where on Whiteley Avenue your business is? the office is located?

A. Yes, I can give you it exactly.

Q. Now, I mean with reference—you see, the address means nothing for the record.

You tell us where it is with reference to the railroad tracks of the Santa Fe Railroad.

A. It is west of the Santa Fe Railroad tracks.

Q. And about how far west?

A. I would judge about——

Mr. Painter (Interrupting): You mean from the tracks or the road?

The Witness: From the tracks, you mean?

Mr. Mouritsen: Yes.

The Witness: About 300 feet, I would judge. [2236]

Q. (By Mr. Mouritsen) Now, which side of the street is it on? Is it on the side of the street where the Hotel Corcoran is or on the side where the station is?

A. It is on the north side of the street.

Q. And that is the side on which the station is, isn't it?

A. Where the station is—yes, sir.

Q. Then first there is the station and then there

(Testimony of Cassius C. Clark.)

is a service station on the corner. That is the next building next to the station, isn't it?

A. There is an intersection of the road there.

Q. That is correct.

And there is a gas station?

A. Yes, there is a gasoline pump there.

Q. Then how many more buildings are there between the corner and the place where you were on this morning?

A. The gasoline station which you refer to is part of the building on the corner and then the next building is Squire's garage, and then the next building is ours.

Q. And how many more buildings are there between your place and the corner going toward the west, I believe, away from the station?

A. I believe there is one, and another service station.

Q. Now, how is your place of business, the place where you were on this morning—where is that with reference to the Hotel Corcoran? [2237]

A. Well, it isn't quite directly across the road. It would be in a westerly—a little west.

Q. As much as 30 feet west of the Hotel Corcoran?

A. 30 to 50 feet. I think there is the width of a lot. I am not sure.

Q. Isn't the hotel Corcoran almost directly between the place where you were on this morning and the Boswell gin? A. That is correct.

(Testimony of Cassius C. Clark.)

Q. And you still state that you saw them coming from the gin on that morning, these cars?

Mr. Painter: Just a moment, your Honor. I object to this. It is a misstatement of the record. I asked him whether they were coming in a direction from the gin or toward the gin.

Trial Examiner Lindsay: That is right. You did ask him that.

You may answer that.

Read the question.

(The question referred to was read by the reporter, as set forth above.)

Trial Examiner Lindsay: I am sorry. That is a misstatement.

Change your question.

Q. (By Mr. Mouritsen) Didn't you testify that you saw them coming from the gin on the morning in question, the cars coming [2238] from the gin?

A. From the direction of the gin I believe it was I testified.

Mr. Mouritsen: That is all.

Mr. Painter: In other words, what direction were the cars going when you saw them?

The Witness: The cars were going when I first noticed them—were going north and they turned and went west on Whitley Avenue.

Mr. Painter: That is all.

Thank you very much, Mr. Clark.

Mr. Mouritsen: No further questions.

(Witness excused.)

Trial Examiner Lindsay: Off the record.

(Here followed discussion off the record.)

Trial Examiner Lindsay: On the record.

We will adjourn until 8:00 o'clock in the morning.

(Whereupon, at 4:15 o'clock p. m., an adjournment was taken until 8:00 o'clock a. m., Saturday, June 10, 1939.) [2239]

American Legion Hall
Corcoran, California

Saturday, June 10, 1939.
8:00 o'Clock a.m. [2240]

PROCEEDINGS

Trial Examiner Lindsay: Hearing called to order.

Mr. Clark: Respondents are ready.

Mr. Mouritsen: Ready for the Board.

Mr. Painter: Mr. Case.

JOHN ARTHUR CASE

a witness called by and on behalf of the Respondent, Associated Farmers of Kings County, Inc., being first duly sworn, was examined and testified as follows:

(Testimony of John Arthur Case.)

Direct Examination

Q. (By Mr. Painter) What is your full name?

A. John Arthur Case.

Q. Where do you live, Mr. Case?

A. 1524 Wigdall Avenue, Corcoran.

Q. What is your business?

A. Civil engineer.

Q. What is that? A. Civil engineer.

Q. And by whom are you employed?

A. J. G. Boswell Company.

Q. Were you employed by that Company in January of this year? A. I was.

Q. Are you acquainted with Mr. Hubbard, Mr. J. W. Hubbard? A. I am.

Q. Is he also employed by that Company? [2242] A. He is.

Q. And were you acquainted with him on January 30th of this year? A. I was.

Q. Do you recall, Mr. Case—I will withdraw that question.

Were you in the office of the J. G. Boswell Company on the day that a group of men came up and asked the pickets to leave? A. I was.

Q. Will you tell me where your office is located in the administration building?

A. The engineer's office is in the Northeast corner of the administration building.

Q. Is that the same office as is sometimes referred to as Gordon Hammond's office?

A. That is correct.

(Testimony of John Arthur Case.)

Q. And you work there? A. I do.

Q. Will you tell us where you were when these men came up that day?

A. In the office. There are three windows facing the north. I was working at the drafting table that faces the left window or west window of the three.

Q. I see.

And your desk, then is right in front of some windows there [2243] on the north side?

A. No. My desk is on the south side of the room but the drafting table is on the north.

Q. You were on the north?

A. I was on the north side.

Q. Did you see Mr. Hubbard that morning?

A. I did.

Q. Did you see him around the plant, around the office any time before these men arrived?

A. I did.

Q. Did you——

Mr. Mouritsen (Interrupting): "These men" refer to the——

Mr. Painter (Interrupting): I will straighten that up.

Q. Did you see him around the office at any time before the men came and asked the pickets to leave? A. I did.

Q. Did you see him at any time while the men that I have referred to, who were asking the pickets to leave, were there? A. Yes.

(Testimony of John Arthur Case.)

Q. Where did you see Mr. Hubbard?

A. Mr. Hubbard was in the same room that I was. [2244]

Q. And what was he doing in there?

A. Before—state your question again, please.

Q. All right. I will withdraw that question.

Where was he in this room that you were in?

A. When?

Q. Well, let me ask you this: When did Mr. Hubbard come in that room?

A. Mr. Hubbard came in that room at the time the group of men and automobiles arrived at the plant.

Q. And how long did he stay in the room with you?

A. Stayed in the room until the automobiles with these various people *in* disbanded.

Q. And what were you doing yourself during that time?

A. I was watching the crowd outside.

Q. What was Mr. Hubbard doing?

A. Watching the crowd.

Mr. Painter: That is all.

One further question I would ask you.

Q. At any time while those men were out there asking the pickets to leave did you see Mr. Hubbard leave the building? A. I did not.

Q. Was he with you during all that time?

A. He was with me.

Mr. Painter: That is all. [2245]

(Testimony of John Arthur Case.)

Cross Examination

Q. (By Mr. Mouritsen) What type of work do you do for the Boswell Company, Mr. Chase?

A. Case.

Q. Do you spell that C-a-s-e?

A. C-a-s-e.

I prepare and take measurements of all water delivered to the Boswell Company from the People's Canal through the Malga Canal.

Q. How do you spell the name of the canal?

A. M-a-l-g-a Canal.

Those reports were prepared by me.

I also prepare estimates and supervise installation of pumps and other engineering data that is required.

Q. Now, was it your testimony that you observed these cars on this particular morning in question from the time they drove up until the time they drove away? A. Yes.

Q. Now, will you tell us where those cars parked when they came up? Did they all park in the road?

A. No. [2246]

Q. Did they surround the—strike that.

Wasn't the picket car on that morning parked down near the scale house of the Boswell Company?

A. That is correct.

Q. And in the immediate vicinity of that house there is a telephone pole, isn't that correct?

A. That is correct.

(Testimony of John Arthur Case.)

Q. Now, did the cars that surrounded the pickets surround the scale house?

A. They were on both sides of the scale house.

Q. And by that, you mean——

A. (Interrupting): East and west.

Q. East and west of the scale house?

A. East and west of the scale house.

Q. And the scale house, of course, is on the property of the J. G. Boswell Company, isn't it?

A. That is correct.

Q. Now, approximately how many of the cars parked west of the scale house?

A. That I couldn't say.

Q. Could you give us your best estimate of it?

A. Well, I would say approximately a third of them.

Q. And approximately how many cars were there on that morning? Just your best recollection. I don't want any exact figures. [2247]

A. I would say between fifty and sixty. I don't know.

Q. And about fifteen or twenty of them parked to the west of the scale house on the Boswell property, is that correct?

A. That is my best recollection.

Q. Mr. Case, how long have you lived in Corcoran?

A. A year and nine months, approximately.

Q. And during that time, have you become acquainted with a number of the people who do business with Boswell?

A. I have.

(Testimony of John Arthur Case.)

Q. Now, on that morning, let me ask you if you recognized any of those people in the picket car—in the cars that came up around the picket car? A. Yes.

Q. Would you give us the names of as many of those people as you can recall?

A. Lloyd Liggett, Forrest Riley, Bob Wilbur, very definitely, Robert Wilbur.

Mr. Clark: I see. Robert Wilbur you can definitely identify?

Mr. Mouritsen: Didn't your statement apply to all of those, that you could very definitely identify Lloyd Liggett as well?

The Witness: Yes, sir.

Q. (By Mr. Mouritsen) Is that all of the names that you can recall—of people that you can recall having seen on that [2248] morning?

A. At this time, yes.

Q. Did you see Mr. Lloyd Liggett's car drive up in front of the picket car that morning?

A. Yes.

Q. And you saw Mr. Liggett get out of his car and go talk to the pickets, is that correct?

A. Yes.

Q. Did you see anyone else talk to the pickets?

A. Forrest Riley and Robert Wilbur.

Q. On that morning did you see a second car drive up—I mean after the first—or after this group of men had driven up, did you some time later, maybe ten or fifteen minutes later, see another car drive up into the crowd?

(Testimony of John Arthur Case.)

A. Not that I recall.

Q. Now, what was—I believe you stated that Mr. Hubbard was in the office with you all of the time that morning while you saw these men drive up and then leave, is that correct?

A. You mean when the men left?

Q. No.

When they first arrived, this group of men and cars first arrived, that he was with you then, is that correct? A. Yes.

Q. And he was also with you when that group of cars and men left, is that correct? [2249]

A. That is correct.

Q. Now, you were watching this all of the time while the incident occurred, is that correct?

A. That is right.

Q. And Mr. Hubbard was also watching it all of the time while it occurred, is that correct?

A. That is right. [2250]

Q. Now, you are very certain about that, aren't you, Mr. Case? A. Yes, sir.

Q. That Mr. Hubbard was watching them all the time?

A. Mr. Hubbard was in the room at the same time.

Q. Well now, didn't Mr. Hubbard watch those cars arrive with you? Weren't you both standing at the window by your drawing board?

A. Yes.

Mr. Mouritsen: I will direct counsel's attention to page 1807 of the official transcript.

(Testimony of John Arthur Case.)

Mr. Clark: What volume is that?

Mr. Mouritsen: Volume 13 on June 5, 1939.

Mr. Clark: 1870?

Mr. Mouritsen: 1807.

Mr. Clark: Oh. What line, please?

Mr. Mouritsen: Beginning with line 12. The question, I believe, was by Mr. Walsh.

Mr. Clark: Suppose you read the four or five questions and answers just immediately preceding that and you will have the whole incident, Mr. Mouritsen, commencing at line 5, "Were you one of the number of people"—

Q. (By Mr. Mouritsen) Now this, Mr. Case, is the testimony that Mr. Hubbard gave regarding this incident. First let me ask you, have you talked with Mr. Hubbard about his tes- [2251] timony on the stand since he appeared? A. No.

Q. You are sure of that, is that correct?

A. Absolutely.

Q. And can you explain how it is that you happen to be testifying at this time?

Mr. Clark: Objected to upon the ground it is incompetent, irrelevant and immaterial; and also calls for matters which are not germane to the issues of this case. I take it the witness can be asked who talked to him, but he has answered the question as to whether or not he talked to Mr. Hubbard. The question is argumentative, "Will you explain how you happened to be testifying in this case."

(Testimony of John Arthur Case.)

Trial Examiner Lindsay: He may answer.

The Witness: State your question again, please.

Trial Examiner Lindsay: Read the question, Mr. Reporter.

(The record referred to was read by the reporter, as set forth above.)

The Witness: At the request of Mr. Painter.

Mr. Clark: May I have that answer?

(The record referred to was read by the reporter, as set forth above.)

Q. (By Mr. Mouritsen) Now I will direct your attention to the testimony of Mr. Hubbard regarding this incident beginning—I will read from the transcript on page 1807 beginning [2252] at line 5.

This is a question by Mr. Walsh: “Were you one of the number of people who were at the Boswell gin late—or in the morning of that day?”

The answer by Mr. Hubbard, “I was there working.”

Question by Mr. Walsh, “In the Boswell office——”

Mr. Clark (Interrupting): “In the Boswell plant.”

Mr. Mouritsen: Pardon me. I accept the correction.

And the answer was, by Mr. Hubbard, “In the office.”

Question by Mr. Walsh, “In the office?”

And the answer by Mr. Hubbard was “Yes.”

(Testimony of John Arthur Case.)

The question by Mr. Walsh was, "Did you see this group of people gather?"

I think it is clear from the context that Mr. Walsh referred to the group of men who requested the pickets to leave, isn't that true, Mr. Clark?

Mr. Clark: Well, the record shows he referred to the gathering outside the plant.

Mr. Mouritsen: And the answer by Mr. Hubbard was, "I saw them while they were there, just a short time before they left, through the window from the office."

The question by Mr. Walsh, "Did you leave the office?"

The answer by Mr. Hubbard, "No, I did not."

"Q. Did you—you did not go out and mingle with the group, is that right?" [2253]

"A. I did not leave the building.

"Q. Did you see what was happening out there in the street?"

And the answer by Mr. Hubbard, "Just as I looked out the window the picket car was driving away."

The question by Mr. Walsh, "Had you *see* the group of people in their automobiles drive up to the picket car?"

The answer by Mr. Hubbard, "I didn't see them arrive, no, sir. I was working. I heard a noise and I looked out the window to see what it was about. I saw the picket car just driving away."

Mr. Clark: Will you read the next question and answer, please?

(Testimony of John Arthur Case.)

Mr. Mouritsen: Certainly.

Question by Mr. Walsh, "Did you see more than one car containing pickets?"

"A. I did not."

I think that is all.

Mr. Painter: What is the question. [2254]

Mr. Clark: What is the question? I move to strike out counsel's reference to the record.

Mr. Mouritsen: I will ask you then, Mr. Case, whether or not Mr. Hubbard was telling the truth when he made those—when he so testified?

The Witness: I suppose he was.

Q. (By Mr. Mouritsen) Well, then—now, wasn't your testimony to the effect that he was standing with you at the window during the entire course of this incident when the men arrived and when the cars arrived and when they left?

A. Yes.

Q. And didn't you understand that Mr. Hubbard's testimony was to the effect that he just saw the incident as the picketing car drove away?

A. That is correct.

Mr. Clark: May I have that read back, Mr. Examiner?

(The record referred to was read by the reporter, as set forth above.)

Mr. Painter: I will object to that—would you read that again?

Mr. Mouritsen: Upon what ground?

(Testimony of John Arthur Case.)

Mr. Clark: It calls for a conclusion of this witness as to the testimony which is in the record and which was read to him. That is the ground. In other words, the testimony of Mr. Hubbard is in the record and it isn't the province of [2255] this witness to pass upon it, but it is the province of the Examiner to pass upon it.

Mr. Mouritsen: I was merely following a line of cross examination that counsel had previously used.

Mr. Clark: I never have asked a question like that in this entire hearing.

Trial Examiner Lindsay: Wait a minute. We won't argue about that. The record will show whether you have or have not.

Mr. Clark: Of course.

Trial Examiner Lindsay: This is not a jury trial.

Now, the answer is in and your objection comes too late. If you want a motion to strike—if you do I will rule on it.

Mr. Painter: May I have the question and answer read back, Mr. Examiner?

Trial Examiner Lindsay: Yes.

(The record referred to was read by the reporter, as set forth above.)

Mr. Clark: We move to strike upon the ground it calls for a conclusion of this witness, and asks for a decision by him upon a matter which is solely in the province of this Court to pass on, that is, the

(Testimony of John Arthur Case.)

meaning of Mr. Hubbard's testimony. The testimony speaks for itself.

Trial Examiner Lindsay: Your motion is denied.

Mr. Mouritsen: I think that is all. [2256]

Redirect Examination

Q. (By Mr. Painter) Mr. Case, what first attracted your attention to this incident?

A. A long line of cars coming down from the Ellett gin.

Q. Did you hear any noise?

A. No, I heard no noise. The window was closed.

Q. Was Mr. Hubbard in your office at the time that your attention was first attracted?

Mr. Mouritsen: I will object to this upon the ground it is an attempt to impeach his own witness.

Mr. Painter: Oh, that is all. I withdraw the question. That is all.

Trial Examiner Lindsay: I have just one question.

Q. What other officials of the Company, or representatives of the Company, did you see around the plant that morning?

Mr. Clark: Just one moment, Mr. Examiner. I am going to object to the form of that question upon the ground that it calls for a conclusion of this witness as to who an official representative of this Company is.

(Testimony of John Arthur Case.)

Trial Examiner Lindsay: I will withdraw the question.

Mr. Clark: That is a matter of proof.

Q. (By Trial Examiner Lindsay) Do you know who the officers of the Boswell Company are?

A. The officers?

Q. Yes, who are here in Corcoran? [2257]

A. Mr. Robinson, Mr. Bill Boswell.

Q. Any others?

A. Officers of the Company?

Mr. Clark: May I have Mr. Robinson identified? There are several persons by that name.

The Witness: Mr. L. T. Robinson.

Q. (By Trial Examiner Lindsay) Do you know Gordon Hammond? A. I do.

Q. Did you see him that morning?

A. I don't remember that I did.

Q. And do you know Kelly Hammond?

A. Kelly Hammond?

Q. Yes. A. No.

Q. Do you know Joe Hammond? A. Yes.

Q. Did you see him that morning?

A. No.

Q. What was the other Robinson's name?

Mr. Clark: Bill Robinson has appeared in the record.

Trial Examiner Lindsay: Yes.

The Witness: I did not see him.

Q. (By Trial Examiner Lindsay) Was there

(Testimony of John Arthur Case.)

anyone else in the office with you there that morning?

A. At the time the incident occurred? [2258]

Q. Yes.

A. During the course of the incident there was Mrs. Irma Crow—

Mr. Clark (Interrupting): May I have the people identified as their names are given, Mr. Examiner?

The Witness: Who is a stenographer; Bernadine Sickie, a stenographer, and Guy Crow, in charge of loans, at various times came into the office, into my office.

Q. (By Trial Examiner Lindsay) Into your office? A. Yes.

Q. What did they do when they came in?

A. They stood and looked out the window.

Q. All looking out the window, then?

A. (Nodding head affirmatively.)

Trial Examiner Lindsay: That is all.

Mr. Painter: That is all. Thank you.

(Witness excused.) [2259]

Mr. Painter: Mr. Baihly.

MOSES DANIEL BAIHLY

called as a witness by and on behalf of the Associated Farmers of Kings County, Inc., having been first duly sworn, was examined and testified as follows:

(Testimony of Moses Daniel Baihly.)

Direct Examination

Q. (By Mr. Painter) What is your full name, please? A. Moses Daniel Baihly.

Q. And where do you live, Mr. Baihly?

A. I live about two miles north and a mile and a half east of Corcoran.

Q. What is your business? A. Farmer.

Q. Are you a member of the Associated Farmers of Kings County? A. Yes, sir.

Q. Were you a member during the month of January of this year? A. Yes, sir.

Q. Were you present at the Boswell gin on the morning that a group of men came up and asked the pickets to leave? A. I was not.

Q. Did you know anything about any plan to ask the pickets to leave? A. I did not. [2260]

Q. Where did you first hear that such an incident had occurred? A. In the afternoon.

Q. Had you been to the ranch of Mr. Salyer in the morning before that incident occurred?

A. No, sir.

Q. Did you attend any barbecue in the evening of the day that that occurred? A. No, sir.

Q. Do you know, Mr. Baihly, of anyone by the name of Ronald Bailey? A. I do not.

Q. Or Roland Bailey? A. No, sir.

Mr. Painter: That is all.

Cross Examination

Q. (By Mr. Mouritsen) How do you spell your name, your last name? A. B-a-i-h-l-y.

(Testimony of Moses Daniel Baihly.)

Q. Have you ever gone by the name of Roland or Ronald Bailey? A. No, sir.

Q. What is your middle initial or name?

A. Daniel.

Mr. Mouritsen: Nothing further. [2261]

Mr. Painter: That is all.

Mr. Mouritsen: Just one question. Could we recall Mr. Baihly?

Trial Examiner Lindsay: Mr. Baihly, right up here.

Q. (By Mr. Mouritsen) Were you present at your home here during the month of January 1939 or were you out of Corcoran away from your home during that period?

A. What particular date?

Q. During the month of January 1939.

Mr. Painter: You mean was he living here in Corcoran at the time?

Mr. Mouritsen: I think the question is perfectly clear as to whether he was present at that time.

Trial Examiner Lindsay: Read the question.

(The question referred to was read by the reporter, as set forth above.)

The Witness: Why, I was here.

Q. (By Mr. Mouritsen) You don't have any recollection of being absent from your home, from Corcoran, for an extended period during the month of January 1939?

A. No, I wasn't for an extended period.

Mr. Mouritsen: I think that is all.

(Testimony of Moses Daniel Baihly.)

Mr. Painter: Mr. Baihly, you were carrying on your farming operation during that month here in Corcoran, weren't you?

The Witness: Yes, sir. [2262]

Mr. Painter: That is all. Thank you.

Trial Examiner Lindsay: That is all.

(Witness excused.)

Mr. Painter: Mr. Botts.

HAROLD E. BOTTS

called as a witness by and on behalf of the Associated Farmers of Kings County, Inc., having been previously duly sworn, was examined and testified further as follows:

Direct Examination

Q. (By Mr. Painter) You are Harold E. Botts, are you not? A. Yes, sir.

Q. You have been sworn in this proceeding?

A. Yes.

Q. Mr. Botts, I want to show you Board's Exhibit 11(a) which is a list of the members of the Associated Farmers of Kings County showing members of that organization on January 30th and also showing the members after January 30th. Now, I would like to ask you a few questions regarding the members of your organization or whether certain people are members.

(Testimony of Harold E. Botts.)

Is Roy Filcher a member of the Associated Farmers of Kings County? A. No, sir.

Q. Has he ever been a member?

A. No, sir. [2263]

Q. Is Bob Wilbur a member? A. No, sir.

Q. Has he ever been a member?

A. No, sir.

Q. Of the organization? A. No, sir.

Q. Is Bill Wilbur a member of the Associated Farmers of Kings County?

A. No, I do not believe he is. I will check it if you want.

(Witness examines the document.)

The Witness: Bill Wilbur is not a member.

Q. (By Mr. Painter) Has he ever been a member? A. No, sir.

Q. Is a man by the name of Heneckie a member of that organization?

A. To my recollection, no.

Q. You know he is not, is that correct?

A. Yes.

Mr. Clark: Let's check it from the list. Let's have it from the membership list rather than his recollection.

The Witness (Examining document): No, sir; he is not a member.

Q. (By Mr. Painter) I am referring to the person that has been called here Red Heneckie.

A. Reid Heneckie. [2264]

Q. Reid? A. Reid.

(Testimony of Harold E. Botts.)

Q. You know him, do you?

A. Yes, sir. [2265]

Q. Is Beale Hanson a member?

A. The name is not familiar to me.

Q. Will you look at your list and see if Beale Hanson is a member of the Associated Farmers?

A. How do you spell the first name?

Mr. Clark: B-e-a-l-e.

The Witness (Examining document): No, sir, Beale Hanson is not a member.

Q. (By Mr. Painter) Do you have a member by the name of Willis?

A. (Examining document) No, sir. There is no man by the name of Willis is a member.

Q. Is Gerald Snyders a member of the Associated Farmers of Kings County?

A. Again my recollection is no. I don't recollect the name.

Q. Will you check it to be sure?

A. (Examining document) Snyders?

Q. Yes.

A. (Examining document) No, sir, there is no such member by that name.

Q. Now, referring to those men I have just mentioned, namely Gerald Snyders, Reid Heneckie, Beale Hanson and Mr. Willis, have they ever been members of the organization? A. No, sir.

Q. Is Clyde Nunley a member of the Associated Farmers of [2266] Kings County?

A. (Examining document) No, sir, he is not.

(Testimony of Harold E. Botts.)

Q. Has he ever been a member?

A. No, sir.

Q. Now, I would like for you to look on the list and find out whether Raymond Gilkey was a member of the Associated Farmers of Kings County on January 30th of this year?

A. (Examining document) No, Raymond Gilkey became a member of the Associated Farmers after January 30th, or the month of February.

Q. All right.

Now, will you look at your list and see if Clifford Hammond was a member of the Associated Farmers of Kings County on January 30th?

A. (Examining document) Clifford Hammond joined the Associated Farmers following January 30th. He was not a member on that date.

Q. At some time after January 30th, is that correct?

A. Yes, sir.

Q. Will you check the list to determine whether Garland Salyer was a member of the Associated Farmers of Kings County on January 30th?

A. (Examining document) This list shows that Garland Salyer joined the Associated Farmers after January 30th.

Q. Now, will you also check your list to determine whether [2267] Slim Jones—incidentally, do you know Slim Jones?

A. Yes, I know him.

Q. Do you know what his real name is?

A. I probably do, but I can't recall it right now. He is known as "Slim."

(Testimony of Harold E. Botts.)

Q. Will you look and see whether he joined before or after January 30th?

A. (Examining document) He joined after January 30th.

Q. Mr. Botts, are there any other organizations or farm organizations, agricultural organizations, active around this locality?

A. Well, there is the Farm Bureau.

Q. Farm Bureau.

Are you a member of the Farm Bureau, Mr. Botts?

A. Yes, sir.

Mr. Mouritsen: Objected to as incompetent, irrelevant and immaterial, and if there was an answer, I move it go out for the purpose of interposing an objection.

Mr. Painter: I think it is perfectly pertinent, your Honor, to show what agricultural organizations there are around this community. There has been no tie-in with the Associated Farmers here, and we would like the privilege of showing that a large percentage of farmers belong to other organizations of a similar nature.

Mr. Mouritsen: I submit, Mr. Examiner, if Mr. Painter is [2268] going to testify, he be sworn.

Mr. Painter: I can make my statement. I think that comment is entirely uncalled for.

Trial Examiner Lindsay: The answer may go out. We are not really interested in other organizations.

Proceed.

(Testimony of Harold E. Botts.)

Mr. Painter: Your Honor, may I make an offer of proof?

Trial Examiner Lindsay: You may.

Mr. Painter: By this witness, it is our intention to prove that there is existing in this locality an agricultural organization known as the Farm Bureau; that practically all farmers and a large majority of all the farmers in this locality belong to that organization; that a large majority of the men who have been named in the complaint in this action are members of that organization; and a large majority of the men who have been identified as having been at the Boswell gin on January 30th are members of the Farm Bureau.

Trial Examiner Lindsay: The offer is rejected.

Mr. Painter: That is all, Mr. Botts. [2269]

Mr. Mouritsen: May I direct counsel's attention to page 1506 of the transcript, volume 11, June 2, 1939?

Do you have that?

Mr. Clark: Yes.

Cross Examination

Q. (By Mr. Mouritsen) On page 1504 I will read to you beginning with line 2 the questions that were put to you, I believe, before by Mr. Walsh regarding the preparation——

Mr. Clark (Interrupting): I think they were put by me to the witness, Mr. Mouritsen.

Mr. Mouritsen: Is this a Board's Exhibit or one of the Boswell exhibits?

(Testimony of Harold E. Botts.)

The Reporter: That is a Board exhibit.

Mr. Clark: They are all Board's exhibits, the list and the supplementary list that Mr. Walsh offered on behalf of the Board.

Mr. Mouritsen: Yes. The questions were put both by Mr. Clark and Mr. Walsh. I will indicate as I read to the witness.

Beginning with line 2, question, I believe, by Mr. Clark:

“Q. Would you be able, Mr. Botts, if I gave you a copy of this exhibit”—referring to Board's Exhibit 11, which is the list of the Associated Farmers members originally furnished by the Associated Farmers—“if I gave you a copy of this exhibit, which you could take away with you, to indicate on it those persons who became members of the Associated Farmers [2270] of Kings County, appearing on the list after January 30, 1939?”

Answer by yourself: “I believe I can do that.

“Mr. Clark: All right.

“Now, Mr. Examiner, I would like permission, then, to let this witness go upon the only reservation that I would like him to indicate on a copy, which I have, of this membership list, the persons who were not members on January 30th in this organization and then I will offer that in evidence.

“Trial Examiner Lindsay: Is that agreeable?

“Mr. Walsh: Satisfactory.

“Trial Examiner Lindsay: How is he going to designate them, by a cross after each one?

(Testimony of Harold E. Botts.)

“Q. (By Mr. Clark) Is that the way you will do it?

“I suggest to you, Mr. Botts, that you simply put a check mark after those appearing on the list, which I will give you, who were not members or who became members after January 30, 1939, and I will recall you and have you testify.

“Mr. Walsh: I wonder if we could supplement that by adding the date on which they became members?

“Mr. Clark: Yes.

“The Witness:” —that is yourself, and I would like to direct your attention to this answer specifically:

“I doubt if I could give you the exact date. It would probably be during the month of February. In some cases, I [2271] could give you the exact date and others I would have to guess at it.”

Q. Now, Mr. Botts, I will show you Board's Exhibit 11(a) and (b) and ask you to indicate on that list the names you are sure about the date on which they became members of the Associated Farmers and the names at which you guessed at the date on which they became members.

Mr. Clark: Objected to, may it please the Examiner, on the ground it is vague and indefinite; also, incompetent, irrelevant and immaterial as to any names there except those which are under investigation now; and I simply suggest, may it please the Examiner, that Mr. Mouritsen direct the wit-

(Testimony of Harold E. Botts.)

ness' attention to those names which he questions and then examine him with respect to his, Mr. Botts', knowledge as to when those people became members. Otherwise, we are going to have him go through 300 odd names and attempt to give that information. [2272]

Trial Examiner Lindsay: He may answer.

The Witness: Now, what was the question again? I forget it. Can I have it read?

(The record referred to was read by the reporter, as set forth above.)

Trial Examiner Lindsay: Do you understand the question?

Mr. Clark: I object on the ground it is compound and complex—that is all.

The Witness: I would imagine it would take a half an hour to do that. Do you want me to do that?

Trial Examiner Lindsay: If you fully understand the question, you may answer.

The Witness: You want me to indicate some names which I gave a date on when they joined, was one part of the question, as I understand it.

Q. (By Mr. Mouritsen) As I recall your testimony, you stated that you could do it, in the case of some members you could give the exact date, and in others you would have to guess at the date.

Now, I would like you to indicate upon the list the names that you know the exact date on, when they became members, and also the names that you merely guess at the date on which they became members.

(Testimony of Harold E. Botts.)

Mr. Clark: I will also add to that objection, Mr. Examiner, that as to all names of persons who are concededly members of [2273] the Associated Farmers on January 30th, 1939, the examination is incompetent, irrelevant and immaterial. It makes no difference how far beyond, before January 30th, a person became a member for the purpose of this case, just so long as he was on January 30th. If the question is to be answered, I suggest that it be confined to those persons whom the list shows were not members on January 30th of this year.

Mr. Mouritsen: That is surely the point of the examination, Mr. Examiner. We are trying to ascertain from this witness, who has stated that he could only guess, and who has furnished us a list in which he states that some were and some were not members on January 30th. We want to test the accuracy of that information.

Trial Examiner Lindsay: Yes. You may proceed and answer the question.

Do you understand the question, Mr. Witness? We are having a lot of argument here, and it would be very simple if it was answered.

Do you understand the question? Don't answer the question if you don't understand it, Mr. Witness. Do you want the question read?

The Witness: Yes, read it back.

(The record referred to was read by the reporter, as set forth above.)

Trial Examiner Lindsay: Take the list there and give us [2274] the ones as you go along.

(Testimony of Harold E. Botts.)

The Witness: The dates on which I am sure——

Mr. Clark (Interrupting): May I get my copy and follow?

Trial Examiner Lindsay: Yes.

Mr. Clark: All right.

The Witness: The only dates on which I put a date on were those individuals who joined, took out a membership in my own presence on the night of the barbecue at the Reden ranch. Those are the only dates that I indicated at all of the several individuals who filed their applications that particular night in my presence. The others bear no particular dates, simply before January 30th or following January 30th. I will give you the names if you wish them, some of the names.

Q. (By Mr. Mouritsen) Let me ask you this. Did you say that there is some method of distinction—strike that.

I believe you said that other than those particular ones that you took at this particular place, the other applications bear no date, is that correct?

A. I simply said I divided them into two groups, those who joined previous to January 30th, and those who joined subsequent to January 30th.

Q. Well, now, didn't you also say that the only applications that are dated are the ones that you yourself took at some particular ranch? [2275]

Mr. Clark: I object to that upon the ground it is a misstatement of the record.

Trial Examiner Lindsay: Yes, sustained.

(Testimony of Harold E. Botts.)

Mr. Mouritsen: I would like the witness to correct me as to what his statement was in that regard.

Mr. Clark: The objection is sustained, I submit.

Trial Examiner Lindsay: Yes, as to that question. He may reframe his question.

Q. (By Mr. Mouritsen) Well, will you tell me just what you did say about the particular applications that you took at this Beden ranch?

A. The Reden ranch.

Q. The Reden ranch. Will you tell me just what you did say about those particular applications, again?

Mr. Clark: Mr. Examiner, I object to that upon the ground it is asked and answered. May I suggest this, it is after 9:00 o'clock and we have had an hour of this session already this morning. May I suggest that we have a short recess at which Mr. Mouritsen can confer with Mr. Botts and maybe he can straighten out the material he wants to get.

Mr. Mouritsen: I would like to complete the examination on this phase.

Trial Examiner Lindsay: Just a minute, please. I believe an attorney has the right to cross examine a witness.

Mr. Clark: I submit he hasn't a right to cross examine [2276] this way, Mr. Examiner.

Trial Examiner Lindsay: Well——

Mr. Clark (Interrupting): It is improper cross examination.

(Testimony of Harold E. Botts.)

Trial Examiner Lindsay: Listen, Mr. Clark. You have your objections, and I am the one to determine whether it is or is not right. Now, let us not argue any more.

I stated at the outset of this hearing that every time an objection was made by an attorney, even though the attorney does not ask for an exception or I did not say "exception," that the record, as a matter of fact, shows an exception in each instance.

Now, as to whether a question will or will not be answered, that is exactly what I am here for. It isn't necessary to constantly interrupt the cross examination of witnesses by any attorney. You have the right to make your objections, and state your reasons, if you so desire, and I will rule on them.

Mr. Clark: I am simply suggesting a recess in which Mr. Mouritsen can get this information.

Trial Examiner Lindsay: Just a moment, Mr. Clark, and you will get a recess.

As to Mr. Mouritsen's method, I will leave that up to Mr. Mouritsen as long as he conducts himself as an attorney. He has that right the same as you have. [2277]

We will have a ten minute recess.

(At this point a short recess was taken, after which proceedings were resumed as follows:) [2278]

Trial Examiner Lindsay: Hearing called to order.

(Testimony of Harold E. Botts.)

Q. (By Mr. Mouritsen) Now, do you have the question in mind, Mr. Botts?

A. I guess we'd better read it over again.

Mr. Mouritsen: While we are having it read, may I also have that part of the testimony about the applications at the Reden ranch read? May I have that read also?

Trial Examiner Lindsay: Yes.

(The record referred to was read by the reporter, as set forth above.)

Mr. Mouritsen: I think perhaps due to the confusion I had better reframe the question.

Q. Mr. Botts, I will ask you if the membership applications or records of the Associated Farmers which you keep indicate the date upon which the members became members of the Association?

A. No, they do not. There is no place for any particular date.

Q. And do you have any other—well, do you have any records that indicate the date upon which members became members of the Associated Farmers?

A. Not as to the exact date; probably get it as to what week or what month, not the particular date other than by my own recollection by some incident.

Q. And other than the records that you keep, I will ask you [2279] if there are any other records of the Associated Farmers that indicate the date upon which the members joined the Associated Farmers?

(Testimony of Harold E. Botts.)

A. Not other than the records I keep.

Mr. Clark: That is the Associated Farmers of Kings County, of course?

Trial Examiner Lindsay: We understand it is Kings County.

Mr. Mouritsen: And may it be stipulated that where I have mentioned the Associated Farmers, it applies only to the Associated Farmers of which Mr. Botts is an officer?

Mr. Clark: Very well.

Q. (By Mr. Mouritsen) You so understood that, didn't you? A. Yes.

Q. Now, Mr. Botts, were you present at a barbecue held on the Salyer ranch on or about January 30, 1939? A. I was.

Q. And it has been previously testified that this was January 30, 1939, which was the date upon which certain pickets were requested to leave the Boswell plant. Is that the day that you have in mind? A. Yes.

Q. And on the evening of that day you attended a meeting or a barbecue at the Salyer ranch, is that correct? A. Yes, sir. [2280]

Q. At that time you were also treasurer of the Associated Farmers of Kings County, Inc., were you not? A. Yes, sir.

Q. Now, were you present during the entire evening on that occasion?

A. Well, I don't know the entire evening. I was there from the time—during the time the barbecue

(Testimony of Harold E. Botts.)

was served and during the program which followed.

Q. And the program that followed consisted of what, Mr. Botts?

Mr. Clark: This is all objected to upon the ground it is incompetent, irrelevant and immaterial and hearsay as to all respondents, no authority having been shown from any of the respondents in this case to Mr. Botts to appear at this barbecue on the evening of January 30th on behalf of any of them.

May it be deemed that that objection runs to that entire line of testimony?

Mr. Mouritsen: So stipulated.

Mr. Clark: Very well.

Trial Examiner Lindsay: He may answer.

The Witness: Is there a question?

Q. (By Mr. Mouritsen) I asked you of what the program that followed the barbecue consisted.

I will stipulate that it is objected to. [2281]

Mr. Clark: Very well.

The Witness: As I recall, one principal speaker was Mr. Harry Martin of Los Angeles.

Q. (By Mr. Mouritsen) I will ask you if you had any connection, or did you obtain the principal speaker for that evening? Did you make the arrangements? A. No, sir.

Q. Do you know who did?

A. No, I don't. I haven't any definite knowledge who did.

(Testimony of Harold E. Botts.)

Q. Well, haven't you heard who did, who made the arrangement?

Mr. Clark: I object to that upon the ground it is hearsay, Mr. Examiner, and calls for something which is not within the knowledge of the witness.

Mr. Mouritsen: This is cross examination.

Mr. Clark: I know, but may I submit that it is simply fishing so far as this witness is concerned to try to find out what rumors he had heard. They are not credible in any way. And may I point out, Mr. Examiner, that even the person who may have been responsible for this hearsay isn't identified. It even goes that far.

Trial Examiner Lindsay: Well surely Mr. Martin didn't come without an invitation from someone.

Mr. Clark: That is a far cry, however, from the Associated Farmers inviting him and that is the only thing of per- [2282] tinency here.

Trial Examiner Lindsay: He may answer.

The Witness: The question, please.

(The record referred to was read by the reporter, as set forth above.)

The Witness: I don't believe I know who made the arrangement. I know I had no knowledge of it.

Q. (By Mr. Mouritsen) And I will ask you if, during the close of his talk, Mr. Harry Lee Martin didn't make some reference to the picketing incident that had occurred earlier in the day.

A. He probably did; probably did.

(Testimony of Harold E. Botts.)

Mr. Clark: May I have the rest of that?

The Witness: He most probably did make some reference to that.

Q. (By Mr. Mouritsen) And do you recall the particular reference that he made?

A. No. I don't recall any particular reference.

Q. Let me ask you if during the course of his talk Mr. Harry Lee Martin didn't say something to the effect that it was now just as necessary as in the earlier days that the farmers act with the Flag in one hand and a pickhandle in the other?

A. I don't recall those words, no.

Q. Well, just—I mean the substance is all. Didn't he [2283] say something to that effect?

A. Recalling his talk, I don't believe that the reference that you gave there was made there, just that way, by Mr. Martin.

Q. And I think you said—you just said it wasn't made just like that. Give us your recollection as to what reference was made in that regard.

A. My recollection would be this: That Mr. Martin had gone through, told his experiences of having gone through the vegetable—I believe it was—strike down in the Imperial Valley four or five years ago, whenever the time was.

Q. Did you——

Mr. Clark (Interrupting): Let us have the rest of it, if there is any more.

The Witness: He said that the only way they could ship their products was the farmers acting together. I don't believe there was any—in his con-

(Testimony of Harold E. Botts.)

versation—there was any violence at all resorted to in the case down in the Imperial Valley or wherever that was but I believe, if I remember correctly, he did say that those men down there, if it come to a pinch, were prepared to see that their produce went through even if they had to use force.

Q. (By Mr. Mouritsen) And did he make a comparison between that situation and the situation of the picketing incident at Boswell's? [2284]

A. If he did, it was only that the situation might be somewhat similar.

Q. And didn't he in that talk that evening praise the action of those farmers in driving out the pickets that morning?

Mr. Clark: I object to this, may it please the Examiner, on the ground it is incompetent, irrelevant and immaterial, has no bearing whatsoever on the events which are alleged in the complaint here to have taken place before Mr. Martin, who isn't accused of having participated in them, ever came to this vicinity.

I submit it has no probative force whether he praised it or not in the event that he entered the scene subsequently, and added to it the fact that there is no connection shown between him and the respondents in this case.

Mr. Mouritsen: Mr. Examiner, if this matter is not connected up, I will have no objection to having it stricken from the record.

Trial Examiner Lindsay: He may answer.

The Witness: What was the question?

(Testimony of Harold E. Botts.)

(The question referred to was read by the reporter, as set forth above.)

The Witness: I don't recall that he praised them for driving out the pickets that morning.

Q. (By Mr. Mouritsen) And didn't Mr. Martin draw a comparison between the stand of the Corcoran farmers to that of the [2285] farmers at Lexington?

A. At Lexington? I don't recall. He may have, but I don't recall it. You are speaking of the revolutionary period?

Q. I assume that is what Mr. Martin had in mind if he made such a statement.

A. He may have made such a statement, but I don't recall it.

Q. Now, Mr. Boyett was also present at that barbecue that night, wasn't he?

A. I couldn't say definitely, but I believe he was.

Q. And he at that time was president of the Associated Farmers of Kings County, wasn't he?

A. Yes.

Q. Now, I will ask you this, Mr. Botts, who—strike that.

On another occasion other than the one in question of—strike that.

For meetings or for barbecues of the Associated Farmers have there been speakers at other times?

Mr. Clark: Objected to on the ground it is incompetent, irrelevant and immaterial and beyond

(Testimony of Harold E. Botts.)

the scope of direct examination. I understood these gentlemen had concluded their case against the Associated Farmers. I even made a motion to dismiss upon that understanding, and now they are exceeding the scope of an examination which we conducted of a witness solely to determine who were members of this organization. If they had any of this information, they would put it in as part [2286] of their case instead of simply fishing around with Mr. Botts now.

I will submit the objection.

Trial Examiner Lindsay: I stated at the beginning of this hearing that I allowed cross examination, recross, and surcross, redirect, to all attorneys in this hearing and all of you have taken full advantage of it. I will not deviate from that theory.

You may answer.

The Witness: What was that question?

(The question referred to was read by the reporter, as set forth above.)

Mr. Clark: Well, just a minute. I suggest, may it please the Examiner, that that question assumes that this particular meeting is an Associated Farmers' meeting. [2287]

Mr. Mouritsen: That might, perhaps, have been drawn. I didn't intend to do that. I withdraw the word "other."

Mr. Clark: I suggest the question be re-framed.

Q. (By Mr. Mouritsen) At meetings and barbecues of the Associated Farmers, have they from time to time had speakers?

(Testimony of Harold E. Botts.)

I will stipulate the objection applies.

The Witness: Yes, we have had speakers.

Q. (By Mr. Mouritsen) Now, in the past, who has made arrangements for such speakers?

A. I believe either Mr. Boyett or myself.

Q. And do you know of anyone else, on any occasion, who has arranged for a speaker other than yourself and Mr. Boyett?

A. No, I can't recall any.

Q. Now, Mr. Botts, I will direct your attention to a meeting of some officers of the Associated Farmers that was held, I believe, two or three days prior to January 30th, 1939, at, I believe, Peden's cafe in Hanford, and ask you if you ever attended a meeting at or about that time?

A. I did.

Q. And were you present at this meeting in Peden's cafe in Hanford a couple of days before this January 30th?

A. I was.

Mr. Clark: Well, the record shows the date was January 28th, Mr. Examiner. If we are going to have it referred to, let's have it accurate. It is the Executive Committee also, [2288] not certain officers of the Associated Farmers. Mr. Walsh developed that on Saturday night, January 28th, there was a meeting at Peden's cafe of the Executive Committee of the Associated Farmers.

Mr. Mouritsen: If Mr. Clark is going to testify, I ask that he be sworn.

Mr. Clark: I am only stating what the record says, and I want the record to be correct.

(Testimony of Harold E. Botts.)

Trial Examiner Lindsay: State what you want for the objection, and Mr. Mouritsen, if you have any statement in opposition to the objection and the reasons, make it, but I won't tolerate any argument back and forth.

Mr. Clark: My objection is also that it is vague and indefinite.

Trial Examiner Lindsay: The objection is in. If you want to say anything as to reasons, you may do so.

You may answer.

The Witness: What was the question?

Trial Examiner Lindsay: Read the question and answer.

(The record referred to was read by the reporter, as set forth above.)

Q. (By Mr. Mouritsen) I believe it has also been testified that a representative, or representatives, of the press were present.

Do you recall whether or not any representatives of the [2289] press were present at that time?

Mr. Clark: Objected to on the ground it is a misstatement of the record. The record is that at a meeting of the Associated Farmers on January 26th, there were certain representatives of the press present, including a gentleman from the Hanford Journal, I believe the name of that paper is, and that was the meeting to which that testimony referred and not to the Executive Committee meeting on the 28th.

(Testimony of Harold E. Botts.)

Trial Examiner Lindsay: Well, reframe your question, Mr. Mouritsen.

Q. (By Mr. Mouritsen) I will ask you, Mr. Botts, if at this meeting on January 28th in Peden's cafe in Hanford, if Mr. Waite of the Hanford Journal wasn't present?

A. On the 28th?

Q. The 28th.

A. He was not present at the Executive Committee in Peden's cafe. He was not.

Q. And—were you also present at this meeting that took place on the 26th? A. I was.

Q. And Mr. Waite of the Hanford Journal was present on the 26th, is that correct?

A. That is correct.

Q. Well, at this meeting on the 28th, were there any representatives of any papers present? [2290]

A. No, not to my knowledge.

Q. Now, I will ask you if any—strike that.

At the meeting on January 28th at Peden's cafe, I believe Mr. Brice Sherman and Mr. Nick Wies were employed by the Associated Farmers of Kings County, Inc., isn't that correct?

A. That was the discussion.

Q. And the discussion was regarding an organizational drive, is that correct?

A. Yes, sir.

Q. Now, I will ask you if you or Mr. Boyett made an announcement of the organizational drive at that time?

(Testimony of Harold E. Botts.)

A. Could I have that question again?

Trial Examiner Lindsay: Yes. Read the question.

(The question referred to was read by the reporter, as set forth above.)

The Witness: I don't quite get your meaning.

Mr. Mouritsen: It is probably indefinite.

Q. I will ask you if you didn't announce to the papers or issue a statement to the papers that you were starting this organizational drive and that Mr. Wies and Mr. Brice Sherman had been employed for the purpose of getting new members to the Associated Farmers?

A. That was released through the papers. Whether it was following that particular meeting or that particular night, I am not sure, but it was right about that date, the following day or a day or two later; I don't know. [2291]

Q. And, of course, January 28, 1939, was on a Saturday night, wasn't it? A. Yes, it was.

Q. And do you recall who released that information for the paper? Was that you or Mr. Boyett?

A. It wasn't me directly. I don't recall who gave it.

Q. Was there some discussion at that meeting as to making it known by giving it publicity in various papers?

A. That was the program adopted.

Q. And you don't recall who was given that par-

(Testimony of Harold E. Botts.)

ticular job of seeing that it was given publicity, is that correct?

A. I don't recall whether it was—just who it was.

Q. I will ask you if Mr. Nick Weis was given that thing to do at that time?

A. You refer now to an announcement in the paper?

Q. To publicizing the organizational campaign and——

A. (Interrupting): No, he wasn't.

Q. You are sure he wasn't?

A. There was no official designation, for example, that Nick Weis could release those.

Q. Now, Mr. Botts, I will ask you if at that time it wasn't discussed that Mr. Harry Lee Martin would be a later speaker for the Associated Farmers?

A. I don't recall that. I would say no if I was to be definite but I wouldn't want it to be definite. I don't think [2292] Harry Lee Martin's name was mentioned.

Q. Now then, also at that meeting was it discussed as to which papers the announcement of this membership drive would be given?

A. It was.

Q. And what papers, please?

A. Every paper issued in Kings County, some in Tulare, some in Fresno County.

Q. That would include the Hanford Journal?

(Testimony of Harold E. Botts.)

A. And Sentinel.

Q. Or Sentinel? A. Both of them.

Q. And both of the papers here in Corcoran?

A. Yes, sir.

Q. And what was the paper in Fresno?

A. The Fresno Bee.

Q. Now, I will ask you if after that time you ever read any of the publicity published in the papers about this organizational drive?

A. I did.

Q. And with reference to that, do you recall whether any such publicity was incorrect in any way? A. No.

Mr. Clark: I object to this manner of examining the witness, Mr. Examiner, on generalities such as that, unless [2293] his attention is directed to the particular article, unless he is shown the article. This obviously can have only one purpose, and that is impeachment; and he is entitled to be faced with the document upon the basis of which counsel seeks to impeach him.

And I submit it is improper cross examination for counsel to sit here and ask this man whether out of a bulk of publicity having to do with a membership drive he read all of the articles and whether he remembers any erroneous statements by the papers. The object is, of course, to try to get him to say that he hasn't and then to show him some article written by someone else in which some statement is made.

(Testimony of Harold E. Botts.)

Mr. Mouritsen: I object to counsel instructing the witness in his purported objection.

Mr. Clark: I am not trying to instruct the witness at all. Everyone can see the purpose.

I will submit the objection, which simply is that the question is improper cross examination, vague and indefinite, and that if the witness is to be questioned concerning any particular article published by a newspaper, it ought to be called to his attention.

Trial Examiner Lindsay: All right.

That objection is quite different. Let us not try to—strike that.

May I have that last question re-read? [2294]

(The record referred to was read by the reporter, as set forth above.)

Mr. Clark: I move that the answer go out. I didn't know it had come in.

Trial Examiner Lindsay: The answer may stand.

I understand that the preceding question—off the record.

(Here followed discussion off the record.)

Trial Examiner Lindsay: On the record.

Mr. Clark: May I have the previous question and answer read?

Trial Examiner Lindsay: Read the question and answer.

(The record referred to was read by the reporter, as set forth above.)

(Testimony of Harold E. Botts.)

Trial Examiner Lindsay: That means just as to what you read.

The Witness: Yes.

Trial Examiner Lindsay: And I am sure that is the intention of the question; is that right, Mr. Mouritsen?

Mr. Mouritsen: Surely. It would obviously be impossible for the witness to testify to something he didn't know.

Trial Examiner Lindsay: Gentlemen, if you will watch the questions and the answers, I am sure that a lot of these statements are unnecessary.

Now, my honest endeavor is to get all of the facts of [2295] this case.

Mr. Mouritsen: Mr. Examiner, since it is nearly 10:00 o'clock, would we take an adjournment at this time and continue the cross examination of the witness at our next session.

Trial Examiner Lindsay: Well, if you think you won't finish before 10:00 o'clock.

Mr. Mouritsen: I don't think that I could, Mr. Examiner.

Trial Examiner Lindsay: Well, all right. Adjournment until Monday morning at 9——

Mr. Clark (Interrupting): Mr. Examiner, I have a short witness or two. I think I could use up the remaining ten minutes if we recall Mr. Botts and call this witness out of turn.

Trial Examiner Lindsay: I would rather not. We will adjourn until 9:30 Monday morning.

Mr. Clark: May it be 10:00 o'clock Monday Morning?

(Testimony of Harold E. Botts.)

Trial Examiner Lindsay: Off the record a moment.

(Here followed discussion off the record.)

Trial Examiner Lindsay: On the record.

Then, on those conditions, you may have until 10:00 o'clock.

(Whereupon, at 9:50 o'clock a. m., an adjournment was taken until 10:00 o'clock a. m., Monday, June 12, 1939.) [2296]

American Legion Hall
Corcoran, California
Monday, June 12, 1939.
10:00 o'clock a. m. [2297]

PROCEEDINGS

Trial Examiner Lindsay: Hearing called to order.

Mr. Clark: The Respondents are ready, Mr. Examiner.

Mr. Mouritsen: Ready for the Board, Mr. Examiner.

Mr. Clark: May it please the Examiner, before going on with Mr. Botts' testimony, may I call the Examiner's attention and that of counsel for the Board to page 2266 of the transcript of Saturday morning at line 25, which question reads "Is Clyde Dunley a member of the Associated Farmers."

The name should be "Nunley," N-u-n-l-e-y.

Mr. Mouritsen: I will stipulate to that.

Mr. Clark: Very well.

There is one other, also on page 2275, commencing at line 6, where Mr. Botts gives the following answer:

"The Witness: The only dates on which I put a date on were those individuals who joined, took out a membership in my own presence on the night of the barbecue at the Reden ranch."

I specifically remember the witness saying "in October."

Mr. Mouritsen: I don't recall it.

Mr. Clark: As a matter of fact, that is the only time there was a barbecue at the Reden ranch, and is so shown by this record.

Mr. Mouritsen: We can clear it up by asking him on the record. [2299]

Trial Examiner Lindsay: He didn't, as I recall it, say "in October."

Mr. Clark: I specifically remember that, Mr. Examiner.

Trial Examiner Lindsay: I think I have that whole answer.

(Examining document.)

Trial Examiner Lindsay: If he said it, I didn't get it.

Mr. Clark: I wonder if the reporter has—it isn't worth while going back to it. I can take that up on cross examination.

There is one other that appears in line 11 at page

2280 in the statement by Mr. Mouritsen, "And may it be stipulated that where I have mentioned the Associated Farmers, it applies only to the Associated Farmers of which Mr. Botts is an offer?" And the word "offer" should be "officer."

May that word "offer" be changed to "officer"?

Mr. Mouritsen: So stipulated.

Trial Examiner Lindsay: Yes.

Mr. Clark: Very well, That is all.

HAROLD E. BOTTS,

the witness on the stand at the time of adjournment, resumed the stand and was further examined and testified as follows:

Trial Examiner Lindsay: Is Mr. McTernan going to be here?

Mr. Mouritsen: He will be here later, Mr. Examiner.

Now, may I direct counsel's attention to page 1476 of [2300] the official transcript which is in Volume XI, June 2nd, 1939, at line 19.

Mr. Clark: The page was what, again?

Mr. Mouritsen: 1476.

Mr. Clark: Very well.

Cross Examination

(Continued)

Q. (By Mr. Mouritsen) Directing your attention to a question put to you by Mr. Clark—put to Mr. Boyett by Mr. Clark—beginning on line 19, as follows:

(Testimony of Harold E. Botts.)

“Did either you or anyone on behalf of the Associated Farmers of Kings County have anything whatsoever to do in any way, manner, shape or form with the calling of that meeting?”

And I think the context indicates that it was the Salyer barbecue on January 30th, isn't that correct, Mr. Clark?

Mr. Clark: Just a minute. Yes, that is my understanding, that that question refers to the barbecue on the evening of January 30th at the Salyer ranch.

Q. (By Mr. Mouritsen) Now, with that in mind, that question in mind, and to which Mr. Boyett's answer was “None whatever,” I will ask you the same question, Mr. Botts: Did either you or anyone else on behalf of the Associated Farmers of Kings County have anything whatsoever to do in any way, manner, shape or form with the calling of that meeting?

A. Answering for myself, first, individually, I had absolutely [2301] nothing to do with it; knew nothing of it until, I would say, 4:30 or 5:00 o'clock.

Mr. Clark: What date, please?

The Witness: Of January 30th.

Speaking in behalf of any official action by the Associated Farmers, there was no connection to my knowledge at all, no knowledge even of the meeting to be held.

Mr. Clark: On behalf of whom?

The Witness: Any of the officers of the Associated Farmers as a group. [2302]

(Testimony of Harold E. Botts.)

Q. (By Mr. Mouritsen) Now, Mr. Botts, I will also ask you if you or anyone on behalf of the Associated Farmers of Kings County had anything whatever to do with the dispersal of the pickets at the Boswell plant on the morning of January 30, 1939.

Mr. Clark: May I have that read back, Mr. Examiner.

Trial Examiner Lindsay: Yes. Read the question.

(The question referred to was read by the reporter, as set forth above.)

The Witness: Individually, again, I did not. I know of no responsibility of any officer in connection with that.

Q. (By Mr. Mouritsen) Now I will ask you this: Are you just as positive that the Associated Farmers had no connection with the dispersal of the pickets as you are of the testimony that they had no connection with the meeting at Salyer's ranch on January 30, 1939?

A. By "meeting," you refer to the one in the morning?

Mr. Clark: Well, I object to the question on the ground it is complex and compound, Mr. Examiner, and improper cross examination.

Trial Examiner Lindsay: May I have the question?

(The question referred to was read by the reporter, as set forth above.)

(Testimony of Harold E. Botts.)

Trial Examiner Lindsay: There is one thing: That meeting you are referring to, you mean the barbecue? [2303]

Mr. Mouritsen: What has been identified as the barbecue.

The Witness: I would testify that there is no connection there with the group, the official group, of the Associated Farmers.

Mr. Clark: You mean in either instance?

The Witness: I mean in either instance.

Q. (By Mr. Mouritsen) I am not asking you that.

I am asking you if you are just as sure that the Associated Farmers had nothing to do with the dispersal of the pickets on the morning of January 30th as you are that the Associated Farmers had nothing to do with the barbecue at the Salyer ranch that same night.

A. I would answer I am just as sure.

Q. I will ask you, Mr. Botts, do you subscribe to the Hanford Journal? A. No.

Q. Do you subscribe to any paper?

A. I subscribe to the Fresno Bee.

Q. Do you take it regularly?

A. I have since about I would say the 1st of March when my subscription in the Hanford Journal ran out.

Q. And isn't it true that you also subscribed to the Fresno Bee in January of this year?

A. I can't give you the date without looking up the time that I paid for it. [2304]

(Testimony of Harold E. Botts.)

Q. But you might or might not have taken it in January of this year, is that correct?

A. I don't think I did.

Q. Now, Mr. Botts, when you were on the stand before, I believe you testified that the Associated Farmers of Kings County, Inc., purchased certain tables and benches and large kettles that I believe you classified as barbecue equipment. Do you recall that testimony?

A. I believe I made some such statement.

Q. Now, I will ask you if that barbecue equipment wasn't used at the Salyer barbecue on January 30, 1939?

A. I can't definitely say that it was or was not, but my impression is that it was.

Q. That is was.

Do you remember who made arrangements for using that barbecue equipment?

A. No, I don't know. I never knew it was used until I saw it there.

Q. And who had charge of the property of the Associated Farmers of Kings County, Inc., during January and February of 1939?

Mr. Clark: Objected to on the ground it is indefinite, Mr. Examiner. That is, what property? This particular equipment or what other property they have?

Trial Examiner Lindsay: Yes. Be specific. [2305]

Mr. Mouritsen: I will accept counsel's sugges-

(Testimony of Harold E. Botts.)

tion in that matter and confine it only to this barbecue equipment.

Mr. Clark: I ask that the question be reframed, Mr. Examiner.

Trial Examiner Lindsay: Yes.

Mr. Mouritsen: I will reframe it.

Q. Who had charge of the barbecue equipment of the Associated Farmers of Kings County during January and February of 1939?

A. I suppose that I had charge of it. In other words, it was stored in one of the garages at the Reden ranch.

Q. Who owns the Reden ranch?

A. I believe it is a Mr. Reden of Los Angeles. [2306]

Q. As a matter of fact, isn't that a Boswell property?

A. Not to my knowledge. They may have it leased.

Q. Yes.

And who is the foreman out there?

A. I don't know.

Q. Well, to whom—with whom did you make arrangements for storing this barbecue equipment on the Reden ranch?

A. I couldn't tell you his name. He was the caretaker there.

Q. Wasn't it a Mr. Lowry?

A. I couldn't say.

Q. When did you store that equipment on the Reden ranch?

(Testimony of Harold E. Botts.)

A. Following the barbecue of October 18th.

Q. And do you recall seeing this equipment at Salyer's ranch on January 30th, 1939?

A. I though I recognized some of it.

Q. Yes.

Now, do you know how that barbecue equipment was hauled to Salyer's ranch on that evening?

A. No, I don't.

Q. Now, I believe you testified on the time we were last in session, Mr. Botts, that nothing was said at this meeting of January 28, 1939, of the— at Peden's Cafe, of the Executive Committee of the Associated Farmers, regarding Harry Lee Martin, is that correct?

A. Yes, that is correct; nothing was mentioned. [2307]

Q. And I think you also stated, did you not, that that was the meeting at which Nick Weis and Brice Sherman were hired, or their hiring was discussed, by the people present, is that correct?

Mr. Clark: Well, may I have the question—I will object to it on the ground it is compound and indefinite, Mr. Examiner; in other words, let's have it as to whether they were hired or whether it was just discussed. An affirmative answer to that would answer both of Mr. Mouritsen's questions.

Trial Examiner Lindsay: That is correct. Sustained.

Q. (By Mr. Mouritsen) I will ask you if, at

(Testimony of Harold E. Botts.)

that time, Nick Weis and Brice Sherman were not hired by the Associated Farmers of Kings County?

Mr. Clark: That is the meeting of the 28th?

Mr. Mouritsen: That is correct.

The Witness: They were hired at the meeting of the 28th.

Q. (By Mr. Mouritsen) There was some discussion at that time regarding a barbecue to be held by the Associated Farmers, isn't that correct?

A. Not at that meeting.

Q. And—there was nothing said at that meeting regarding a barbecue, is that correct, that you recall?

A. No, it wasn't mentioned.

Q. Now, are you positive of that, Mr. Botts?

A. I believe I am positive of that. [2308]

Q. And you are just as positive of that as you are of the rest of the testimony that you have given here, is that correct?

A. The testimony is true to the best of my recollection.

Q. You are as positive of that as you are of the fact that the Associated Farmers had nothing to do with the dispersal of the pickets on January 30th, 1939?

Mr. Clark: Objected to as already asked and answered, and argumentative, Mr. Examiner.

Trial Examiner Lindsay: He may answer. Answer that yes or no.

The Witness: What was the question?

(Testimony of Harold E. Botts.)

(The question referred to was read by the reporter, as set forth above.)

Mr. Clark: Same objection.

Trial Examiner Lindsay: He may answer.

The Witness: My answer is I am just as positive from my own recollection.

Q. (By Mr. Mouritsen) Now, Mr. Clark—or, Mr. Botts, may I direct your attention to the testimony that you gave when you were previously on the stand regarding this meeting at Peden's Cafe.

And I will direct counsel's attention to page 1497 of the official transcript.

Mr. Clark: What volume? [2309]

Mr. Mouritsen: Volume XI.

Mr. Clark: What line?

Mr. Mouritsen: Beginning with line 8.

Do you have it, Mr. Clark?

Mr. Clark: Yes.

Q. (By Mr. Mouritsen) Now, a question to you by Mr. Walsh as follows:

“Q. (By Mr. Walsh) Now, Mr. Botts, who made the arrangements for this barbecue that you told us about that was held on the Salyer ranch in the early part of February?

“A. I don't know as I can name the guiding spirit of it at all. It was simply, as I recall it, the tent was out there and we thought it desirable to have another public hearing as at this time we were in a campaign for mem-

(Testimony of Harold E. Botts.)

bership and that was the idea of it, so I presume that the Executive Committee were the ones that more or less sponsored it with that idea in mind.

“Q. Do you know—did you have any meetings of the Executive Committee for the purpose of making those arrangements and committing the organization to that expense?

“A. No, I don’t believe we did because I believe that was all delegated at the previous meeting mentioned in Mr. Boyett’s testimony.

“Q. Do you know at what meeting it was determined to have that barbecue? [2310]

“A. When we met in Peden’s Cafe. What was the date of the previous Executive—some time the latter part of January.

“Q. January 28th, I believe Mr. Boyett fixed as the date.

“A. One Saturday night, I remember. In talking over the membership drive we decided to hold a public meeting at some place during the month of February and that tent was out there at Salyer’s, and it was offered to us if we wanted to use it.” [2311]

Mr. Clark: Now, let us have the question.

Q. (By Mr. Mouritsen) Mr. Botts, I will ask you if that testimony that you gave at that time was true.

Mr. Clark: I object to that upon the ground, may it please your Honor, that it is argumenta-

(Testimony of Harold E. Botts.)

tive, incompetent, irrelevant and immaterial and that that testimony is entirely consistent with that just given by Mr. Botts from the stand.

Mr. Mouritsen: Now, Mr. Examiner——

Mr. Clark (Interrupting): And it is intended only—just a minute, please, until I state the grounds of my objection—and it is intended as impeachment, Mr. Examiner, and that it fails to accomplish that purpose and has no place in the record.

Mr. Mouritsen: Have you completed?

Mr. Clark: Yes, I have completed my objection.

Mr. Mouritsen: I must object to this continual interruption by counsel and I must object to counsel's instructing the witness under the guise of an objection. Time after time when I am just getting at the truth of a matter and counsel interrupts and instructs the witness under the guise of trying to object.

Mr. Clark: You have been getting nothing but the truth of the matter consistently throughout this case.

Trial Examiner Lindsay: Now, listen. Let us proceed [2312] here. You may answer.

Read the question back, please.

(The record referred to was read by the reporter, as set forth above.)

The Witness: Was that my testimony that was read there?

(Testimony of Harold E. Botts.)

Q. (By Mr. Mouritsen) I will instruct you, Mr. Botts, I have been reading from page 1497 and 1498 of the official transcript in this matter, the questions put to you by Mr. Walsh and the answers made by yourself as indicated in the transcript.

Mr. Clark: I object to that as an improper statement, Mr. Examiner, because the proper question is whether this witness remembers so testifying. In other words, we just can't assume, without putting the reporter on the stand, that this is a correct transcription of the testimony. The proper impeaching question, I submit, is whether or not this gentleman so testified on that occasion.

Trial Examiner Lindsay: He may answer the question.

Mr. Clark: I object to the form of the question.

Trial Examiner Lindsay: He may answer the question.

The Witness: As your answers and questions were read there, in the sequence that they were read in, is misleading in this respect. By the reading of that answer and question one would get the impression that was discussed at a meeting of the Executive Committee on January 28. There was a [2313] directors' meeting, I believe it was, on the 26th. It was at this directors' meeting earlier in the week that there was some talk of some time during the month of February holding a public barbecue, and not at the Executive meeting held on the 28th.

Trial Examiner Lindsay: Now I would like to have that other answer read back to me.

(Testimony of Harold E. Botts.)

Mr. Clark: Which one, Mr. Examiner? The one in the record.

Trial Examiner Lindsay: The one he has given.

Mr. Mouritsen: From the transcript, Mr. Examiner?

Trial Examiner Lindsay: Yes.

Mr. Mouritsen: Well, the question begins on line 24, at page 1497.

Mr. Clark: I think that perhaps in proper response to his Honor's question you ought to start up at line 18.

Trial Examiner Lindsay: I want him to read exactly what he read before.

Mr. Clark: That starts earlier.

Mr. Mouritsen: That starts at line 8.

Mr. Clark: Suppose we have it all. [2314]

Mr. Mouritsen: This was a question by Mr. Walsh.

“Q. Now, Mr. Botts, who made the arrangements for this barbecue that you told us about that was held on the Salyer ranch in the early part of February?

“A. I don't know as I can name the guiding spirit of it at all. It was simply, as I recall it, the tent was out there and we thought it desirable to have another public hearing as at this time we were in a campaign for membership and that was the idea of it, so I presume that the Executive Committee were the ones that more or less sponsored it with that idea in mind.

(Testimony of Harold E. Botts.)

“Q. Do you know—did you have any meetings of the Executive Committee for the purpose of making those arrangements and committing the organization to that expense?

“A. No, I don’t believe we did because I believe that was all delegated at the previous meeting mentioned in Mr. Boyett’s testimony.

“Q. Do you know at what meeting it was determined to have that barbecue?

“A. When we met in Peden’s Cafe.”

The Witness: There were two meetings——

Trial Examiner Lindsay (Interrupting): Just a minute.

Mr. Clark: Finish that, please.

Mr. Mouritsen: “What was the date of the previous Executive—some time the latter part of January. [2315]

“Q. January 28th, I believe Mr. Boyett fixed as the date.

“A. One Saturday night, I remember. In talking over the membership drive we decided to hold a public meeting at some place during the month of February and that tent was out there at Salyer’s, and it was offered to us if we wanted to use it.”

Trial Examiner Lindsay: Now, off the record just a moment.

(Discussion outside the record.)

Trial Examiner Lindsay: You may proceed.

Q. (By Mr. Mouritsen) Now, Mr. Botts, I believe you testified—no, strike that.

(Testimony of Harold E. Botts.)

As you recall it, then, the discussion of a barbecue at an Executive or a meeting of the Executive Committee was discussed on a Saturday night, is that correct?

Mr. Clark: May I have that read back, Mr. Examiner, please?

Trial Examiner Lindsay: Yes, please read it.

(The record referred to was read by the reporter, as set forth above.)

Mr. Clark: Well, I object to that upon the ground it is assuming something not in evidence, and is misleading and argumentative because, as I understand the witness's testimony now, he says that this barbecue discussion was at a member-[2316] ship—was at a Directors' meeting two days previously.

Mr. Mouritsen: Again I object to this manner, Mr. Examiner, of instructing the witness, in a manner purporting to be an objection. I am merely trying to find out from the witness what his testimony is in this regard. Mr. Clark keeps continually instructing him under the guise of making objections.

Mr. Clark: Let us have the question put fairly. That is all I am interested in.

Trial Examiner Lindsay: Just a moment, gentlemen.

Now, I believe this witness is on the witness stand and he is subject to cross examination, and you may

(Testimony of Harold E. Botts.)

make your objections, but let us both frame our questions correctly and make our objections correctly.

Now, there is just one thing about that question—read the question back—it may be a little misleading.

Mr. Mouritsen: I will withdraw it, Mr. Examiner.

Q. I believe you have a 1939 calendar there, do you not, Mr. Botts? A. Yes.

Q. And by reference to that calendar, can you tell us whether or not January 28th, 1939, fell on a Saturday? A. It does.

Q. Now, Mr. Botts, can you tell us what else was discussed at this meeting of January 28th, 1939, other than the hiring [2317] of Nick Weis and Brice Sherman?

Mr. Clark: I object to that on the ground it was all gone over on cross examination by Mr. Walsh and also by Mr. Mouritsen, and it has been exhausted twice, Mr. Examiner.

Trial Examiner Lindsay: He may answer that question.

The Witness: I recall of nothing being discussed except the membership campaign and the appointment of Mr. Weis and Brice Sherman.

Q. (By Mr. Mouritsen) And there is nothing further that you can recall that took place at that time? A. No.

Mr. Clark: Objected to upon the ground it is asked and answered.

(Testimony of Harold E. Botts.)

Trial Examiner Lindsay: The answer may stand.

Q. (By Mr. Mouritsen) Now, Mr. Botts, may I direct your attention to what purports to be a photostatic copy of the Valley Edition of the Fresno Bee for Monday evening, January 30th, 1939, to an article therein, headed "Farmer Group Plans Kings Drive," and I will ask that you read that article.

Mr. Clark: You mean to himself?

Mr. Mouritsen: To himself, sure.

(The document referred to was passed to the witness.)

Q. (By Mr. Mouritsen) I will ask you, Mr. Botts, if reading that article doesn't refresh your memory as to what transpired at the meeting of January 28th, 1939 in Peden's Cafe? [2318]

A. It refreshes it only this much, that I am positive that nothing was discussed except the hiring of Nick Weis and Brice Sherman to conduct the campaign. That was the entire purpose of the meeting.

Q. (By Mr. Mouritsen) Well, let us consider the article, then, Mr. Botts.

It states in the article—

Mr. Clark (Interrupting): Just one moment. I object to this, may it please your Honor, on the ground it is improper cross examination, that that article is not an exhibit in this case and is not admissible as an Exhibit. In other words, counsel is

(Testimony of Harold E. Botts.)

stating into the record what the article states.

Trial Examiner Lindsay: Yes. It must be marked.

Mr. Mouritsen: I intended to do that later.

May it be marked for identification at this time?

Trial Examiner Lindsay: 29, I believe.

(Thereupon, the document above referred to was marked as Board's Exhibit No. 29 for identification.)

Q. (By Mr. Mouritsen) Now, I will ask you, Mr. Botts, if that part of the article relating to Nick Weis and Brice Sherman does not state that matter correctly?

Mr. Clark: Objected to upon the ground it is assuming something not in evidence. It calls for hearsay as to these Respondents. The article upon which the question is based is in no way connected with any Respondent in this case, and there- [2319] fore the question calls for a statement which is incompetent, irrelevant and immaterial, and it is improper cross examination.

Trial Examiner Lindsay: He may answer.

The Witness: May I have the question again?

Q. (By Mr. Mouritsen) It was merely as to whether or not the article does not state the correct matters with reference to Nick Weis and Brice Sherman.

I will stipulate that your objection may apply.

Mr. Clark: I will object to that question as vague and indefinite, and ambiguous. It refers to some-

(Testimony of Harold E. Botts.)

thing, Mr. Examiner, which is not in evidence in this case. [2320]

The Witness: I will have to have the question again.

Trial Examiner Lindsay: Read the question.

(The record referred to was read by the reporter, as set forth above.)

The Witness: I think that part of it states that correctly.

Q. (By Mr. Mouritsen) I will ask you then, Mr. Botts, if it doesn't refresh your memory as to whether or not Harry Martin being a speaker for a meeting of the Association was discussed at that January 28th meeting or not.

A. It refreshes my memory, yes.

Q. And does it refresh your memory as to whether the discussion regarding a barbecue at one of these meetings of the executive council was not in fact regarding the meeting at the Salyer ranch on January 30, 1939?

Mr. Clark: May I have that read back, please?

Trial Examiner Lindsay: Yes. Read the question.

(The record referred to was read by the reporter, as set forth above.)

Mr. Clark: That is objected to upon the ground it is ambiguous, indefinite, and unintelligible.

Trial Examiner Lindsay: I think I will sustain the objection. Reframe your question.

(Testimony of Harold E. Botts.)

Q. (By Mr. Mouritsen) Well, in fact, at one of these Executive Board meetings, didn't the Associated Farmers or [2321] the executive committee thereof, plan this meeting at the Salyer ranch on January 30, 1939?

Mr. Clark: I object to that upon the ground it misstates the record which shows there was only one executive committee meeting and that is the one of the 28th.

Trial Examiner Lindsay: Well, I don't believe that he is quoting any record on that. I believe it is a straight question.

Read the question.

(The record referred to was read by the reporter, as set forth above.)

Trial Examiner Lindsay: He may answer that question.

The Witness: At an executive committee? Is that the way it is worded? I didn't quite get the wording of that.

(The record referred to was read by the reporter, as set forth above.)

The Witness: My answer would be no, it was never considered at any executive committee.

Q. (By Mr. Mouritsen) And is it also your—strike that.

Was the meeting at Salyer's ranch on January 30, 1939, discussed at any meeting of either the members or of any of the officers of the Associated Farmers prior to the time that it was held?

(Testimony of Harold E. Botts.)

A. No.

Q. Your testimony is that there was no meeting of the [2322] Associated Farmers of Kings County on January 30, 1939, is that correct?

A. May I have the question again?

(The record referred to was read by the reporter, as set forth above.)

The Witness: There was no meeting on January 30.

Q. (By Mr. Mouritsen) Now, Mr. Botts, directing your attention to the financial statement of the Associated Farmers of Kings County, Inc., I will ask you how expenditures of that organization are made.

Mr. Clark: Objected to upon the ground that the question is unintelligible. The financial statement isn't identified in the record. What financial statement?

Mr. Mouritsen: That is Board's 14(a) and (b), which you furnished.

Mr. Clark: I will ask that the question be re-framed, Mr. Examiner.

Trial Examiner Lindsay: Do you understand the question?

The Witness: I could answer it but I don't know whether I could answer——

Trial Examiner Lindsay (Interrupting): Re-frame the question.

The Witness: It might be ambiguous.

Q. (By Mr. Mouritsen) Do you make the ex-

(Testimony of Harold E. Botts.)

penditures for the Associated Farmers of Kings County, Inc.? [2323]

A. I have partial responsibility.

Q. How are those expenditures made?

A. Would you let me——

Q. (Interrupting) Do you pay them in cash or checks? A. All by check.

Q. And you have control of the check book, is that correct, Mr. Botts? A. That is correct.

Q. And do you have the canceled checks that have been returned to you after—well, returned to you from the bank? A. I believe so.

Q. Now, would you be willing to bring those canceled checks to this hearing?

Mr. Clark: Well, may we have it indicated which canceled checks are requested? As to any specifically requested, Mr. Examiner, we would be very pleased to produce them, but not all of the checks for counsel to run through.

Mr. Mouritsen: I think it would be necessary to have all of the checks, Mr. Clark.

Mr. Clark: We will bring all of the checks with us, but we are only going to produce those which are specifically called for or identified. If you will identify them, we will produce them willingly, but we are not going to produce all of the checks for you to run through unless the United States District Court orders us to do it. [2324]

Mr. Mouritsen: Well, I will have the Examiner rule whether that is a proper request or not.

(Testimony of Harold E. Botts.)

Mr. Clark: I will state to the Examiner we will have all of the check books here at noon time.

Trial Examiner Lindsay: Well, I think that any checks pertaining to the subject matter here is a proper request.

Mr. Clark: I agree with that.

Trial Examiner Lindsay: So you have them here.

Mr. Clark: Any checks pertaining to the subject matter is entirely proper for counsel to request, but I am simply asking him to indicate what subject matter he is interested in.

May I ask a question, Mr. Examiner, of Mr. Botts with respect to these checks?

Trial Examiner Lindsay: Yes.

Mr. Clark: Can you get all of the canceled checks of the Associated Farmers of Kings County here this afternoon, Mr. Botts?

The Witness: I believe so, yes.

Mr. Mouritsen: Will you do that, then?

Mr. Clark: Yes, indeed. We will have them here, but I am still saying and insist upon before I produce any of them a specification.

Trial Examiner Lindsay: We can at least decide, Mr. Clark, when the checks are brought in here. [2325]

Mr. Clark: Yes, I wanted the record to show that.

Q. (By Mr. Mouritsen) Now, Mr. Botts, I will direct your attention to Board's Exhibit 14(b)

(Testimony of Harold E. Botts.)

in which—on which appears the figure “barbecues, \$500.39,” and I will ask you how many barbecues that covers, those expenditures cover.

A. That covers two barbecues.

Q. And one of those barbecues was held on the Reden ranch, is that correct?

A. Reden ranch, October 18, 1938.

Q. And one was held on the Salyer ranch, is that correct?

A. One was held on the Salyer ranch about two or three weeks—I don’t remember the exact date—after January 30th.

Q. Of what year? A. 1939.

Q. And how much did the—I think the expenditure for the first barbecue which was held, as I understand it, on the Reden ranch on October 18th, was \$381.77, is that correct?

Mr. Clark: I object to this on the ground it has all been gone into on cross examination by Mr. Walsh. The testimony is all in on it, Mr. Examiner, and it is simply repetition.

Trial Examiner Lindsay: He may answer.

The Witness: What was the question?

(The question referred to was read by the reporter, as set forth above.) [2326]

The Witness: I believe that is correct.

Q. (By Mr. Mouritsen) And the remainder of the \$500.39 was spent for this subsequent barbecue, is that correct?

A. In substance, that would be correct. I

(Testimony of Harold E. Botts.)

wouldn't want to state absolutely that would be correct, but that is my impression.

Q. Now, I will ask you, Mr. Botts, if the expenditures for the second barbecue included the payment of expenses of any speaker who appeared at the second barbecue?

A. It did. It included the expenses of the speaker.

Q. And was that payment of the expenses of the speaker made by check?

A. Recalling my statement, the expenses of Mr. Penner, a minister of either Kingsburg or Dinuba, were paid by check.

Q. Now, directing your attention, Mr. Botts, to a meeting of the—well, this meeting that has been identified as taking place on January 26th, 1939, at which there was some discussion regarding the farmers or some transportation association, I will ask you if you were present at that meeting.

A. I was.

Q. And you have that meeting in mind, is that correct?

A. Yes.

Q. Now, was Mr.—I believe Mr. Boyett was also present at that meeting?

A. That is my impression, that he was there. [2327]

Q. And at that time there was some discussion, I believe the testimony is, to the effect that Mr.—a Mr. Pennybaker outlined the Farmers Transportation Association, or some such organization, is that correct?

(Testimony of Harold E. Botts.)

A. I believe that is correct.

Q. Do you recall the name of that transportation association? It isn't clear in my mind just what it was.

A. Under testimony I wouldn't want to say this is exact, but I believe it is the Farmers Transportation Association. I may be incorrect. I would rather look that up before I give an answer.

Mr. Mouritsen: Could I have a moment, Mr. Examiner?

Trial Examiner Lindsay: Yes. You may have a ten-minute recess at this time.

(At this point a short recess was taken, after which the hearing proceeded as follows:)

Trial Examiner Lindsay: Hearing called to order.

Mr. Mouritsen: Ready for the Board.

Mr. Examiner, we have a stipulation with reference to Board's 29 for identification.

Will you read it, please, Mr. Clark?

Mr. Clark: Yes.

Mr. Examiner, on behalf of the respondent Associated Farmers of Kings County, Inc., I am willing to stipulate that the document marked Board's Exhibit 29 for identification, being [2328] a photostatic copy of a purported article, a purported page from the Fresno Bee dated January 30, 1939, is a true copy, a true photostatic copy made in Mr. McTernan's presence of a document which is at present in a bound volume designated as the "All Edition File" for the month of January, 1939, in the office

(Testimony of Harold E. Botts.)

of the advertising department of the Fresno Bee in the City of Fresno, this state.

Mr. Mouritsen: So stipulated.

Mr. Clark: The purpose for that stipulation is merely to remove the necessary mechanics in proving the photostatic copy was made. I don't intend to waive any requirement to authenticate it or connect it up with these respondents, and on behalf of the remaining respondents—there is no offer yet——

Mr. Mouritsen: On the basis of that stipulation, Mr. Examiner, I will now offer Board's 29 for identification in evidence.

Mr. Clark: To which we object, Mr. Examiner, upon the ground no proper foundation has been laid; the purported article hasn't properly been authenticated, no connection whatsoever has been shown between any respondent in this case in the publication of that article; that it hasn't even been shown that that article came to the attention of any respondents in this case or any member or representative of any respondent and that it is heresay as to all respondents and is incompetent, [2329] irrelevant and immaterial.

Mr. Mouritsen: Well, with reference to that, Mr. Examiner, I propose later to show, through witnesses, that the paper of which Board's 29 for identification is a sheet, was circulated on that date in the City of Corcoran, so perhaps the offer is a little premature.

(Testimony of Harold E. Botts.)

.. Trial Examiner Lindsay: I will reserve ruling on it.

Q. (By Mr. Mouritsen) Now, Mr. Botts, directing your attention to the barbecue sponsored by the Associated Farmers on Salyer's ranch, I will ask you if you know who made the arrangements for that barbecue.

Mr. Clark: I will object to that upon the ground it is ambiguous, misleading and indefinite. The time should be specifically identified as to the time.

Mr. Mouritsen: The witness has already identified or stated that the Associated Farmers sponsored a barbecue held on Salyer's ranch.

I am just——

Mr. Clark (Interrupting): I don't want any statement——

Trial Examiner Lindsay (Interrupting): I am sure the record is clear. He testified it was some two or three weeks after January 30th. Is that the one you are referring to?

Mr. Mouritsen: Yes, that is correct.

Mr. Clark: That is all I want.

Q. (By Mr. Mouritsen) With that understanding in mind—[2330] I will reframe the question.

I believe you testified that a barbecue was held on Salyer's ranch sponsored by the Associated Farmers some time in February 1939. Do you recall that?

A. I believe that is my testimony, yes.

Q. And that barbecue was held in a tent that

(Testimony of Harold E. Botts.)

was erected at that time, or was at that time erected on the Salyer ranch, isn't that correct?

A. Yes, the tent was still standing.

Q. Do you know who made arrangements for holding that barbecue on the Salyer ranch?

Mr. Clark: Objected to upon the ground it is asked and answered. The entire subject matter was developed by Mr. Walsh.

Trial Examiner Lindsay: He may answer.

The Witness: I cannot give you the names of the particular individuals who made the arrangements, but I am sure that that was sponsored by the Associated Farmers, the barbecue held in February.

Q. (By Mr. Mouritsen) Did you make arrangements for using the tent on Mr. Salyer's ranch?

A. Personally, no.

Q. Do you know who did?

A. No, I can't name the party.

Q. Were you present at any meeting of any officers of the [2331] Associated Farmers when someone was designated to take charge of the arrangements for that barbecue?

A. As far as I can recollect, there was no definite meeting to discuss that.

Mr. Clark: I move that go out as not responsive, and ask that the question be answered.

Mr. Mouritsen: Yes.

Q. Were you present at any meeting of any officers of the Associated Farmers at which someone

(Testimony of Harold E. Botts.)

was appointed to make arrangements for this barbecue at Salyer's ranch?

A. No, I was not present at any meeting. [2332]

Q. Well, were you present at a meeting of the Associated Farmers at which someone was appointed to make arrangements for this barbecue at Salyer's ranch?

A. I don't believe there was any meeting. It was——

Trial Examiner Lindsay (Interrupting): Were you present if there was?

The Witness: No.

Q. (By Mr. Mouritsen) Were you present at any meeting of the Associated Farmers at which time the holding of a barbecue at Salyer's ranch was discussed?

Mr. Clark: Objected to upon the ground it has been asked and answered four or five times.

Trial Examiner Lindsay: Sustained.

Q. (By Mr. Mouritsen) I will ask you also, Mr. Botts, if an application blank for membership in the Associated Farmers has a place for a date on it?

Mr. Clark: Objected to upon the ground it has been asked and answered. The record shows it has not. He answered that on Saturday.

Mr. Mouritsen: That I am not so sure of.

Trial Examiner Lindsay: Well, neither am I. You may answer the question.

The Witness: The application blank has no

(Testimony of Harold E. Botts.)

space for a date. By that, I mean the day on which the application——

Mr. Mouritsen (Interrupting): Does it have any date space [2333] for a date on it at all?

A. There is no printed space for that.

Q. Do you have a number of membership blanks for the Associated Farmers in your possession?

A. Yes.

Q. Do you have any with you now? A. No.

Q. When you bring the checks this afternoon, will you also bring several exemplars of application blanks for membership in the Associated Farmers?

Mr. Clark: We will bring them with us.

Mr. Mouritsen: You may inquire.

Mr. Clark: Mr. Examiner, I would like the record to show that my right to move to strike certain testimony elicited by Mr. Mouritsen on the cross examination of this witness with respect to statements made by Mr. Harry Lee Martin at the barbecue of January 30th, 1939, which Mr. Mouritsen promised to connect up, be reserved until your Honor has passed upon the admissibility of Board's Exhibit 29 for identification. The motion should come at this time, and I understand there is to be a further showing with respect to that Exhibit.

Trial Examiner Lindsay: Well, both the motion to strike and the reception of the Exhibit marked for identification as Board's Exhibit 29 are reserved.

Mr. Clark: Very well; thank you. [2334]

(Testimony of Harold E. Botts.)

Redirect Examination

Q. (By Mr. Clark) Mr. Botts, during your cross examination by Mr. Mouritsen on last Saturday morning, you testified in effect that the only dates you furnished on the copy of Board's Exhibit No. 11, being the membership list, were those concerning which applications had been made in your presence on the night of the barbecue at the Reden ranch.

Do you remember that testimony?

A. I remember it.

Q. Will you please tell us when that barbecue took place?

A. On the evening of October 18th, I believe, 1938.

Q. What year? A. 1938.

Q. And was that the barbecue to which you were referring when you made answer to Mr. Mouritsen's questions in that regard, namely, the barbecue of October, 1938?

A. The question isn't quite clear.

Mr. Clark: I will withdraw it.

Q. And was that the barbecue to which you were referring on Saturday morning in answering Mr. Mouritsen's questions?

Mr. Mouritsen: May we have the statement made to the witness so he won't be misled?

Mr. Clark: I did in the prior question. May I have the prior question, please?

Trial Examiner Lindsay: Yes. Read the prior question. [2335]

(Testimony of Harold E. Botts.)

(The question referred to was read by the reporter, as set forth above.)

Mr. Clark: Read the question before that.

(The question referred to was read by the reporter, as set forth above.)

Q. (By Mr. Clark) When you told Mr. Mouritsen on your cross examination that certain membership applications were taken in your presence, and that those were the ones which you had furnished specific dates for on the copy of Board's Exhibit 11, am I correct in stating that you were referring to the barbecue at Reden's ranch on October 18th, 1938?

A. That is correct; the meeting at Reden's ranch on October 18th, 1938.

Q. Now, with respect to the amounts which Board's Exhibit 14-B indicate—withdraw that.

With respect to the amounts which Board's Exhibit 14-A and 14-B indicate were paid by the Associated Farmers of Kings County, Inc. for barbecues, would you please tell us whether or not the first amount paid included the purchase of this equipment we have been discussing?

A. That is the benches and seats?

Q. Yes.

A. I believe that is correct. It included that amount.

Q. All right.

And then from time to time, later, were there further bills [2336] which were paid for that

(Testimony of Harold E. Botts.)

equipment which hadn't come in at the time you made out the financial statement of November 22nd, 1938?

A. Some of the bills were paid subsequent to November 22nd.

Q. Am I correct in stating, then, that the figure \$500.39 which appears on Board's Exhibit 14-B is the total cost to the Associated Farmers of Kings County, Inc. for the two barbecues you have mentioned, namely, that of October 18th, 1938, and the one in the middle of February, 1939, plus the cost of equipment which you purchased for the purpose of holding those barbecues?

A. I believe that is correct; the figure given here, \$500.39, was arrived at on a different date than November 22nd, which appears on the other.

Q. All right.

But the thing I am after is this: Are the items which that figure covers the cost of the two barbecues I have mentioned, plus the equipment which you still have?

A. I believe so. I believe that is correct.

Q. On your cross examination, Mr. Botts, by Mr. Mouritsen, with respect to Board's Exhibit 29 for identification, you were asked whether an examination of that document refreshed your recollection with respect to whether or not Mr. Harry Lee Martin's name had been mentioned at the Executive Committee meeting of January 28th, 1939, held at Peden's Cafe in Hanford. [2337] Do you remember that question being asked?

(Testimony of Harold E. Botts.)

A. Yes, I remember the question being asked. [2338]

Q. And I believe you answered that your recollection was refreshed in that connection?

A. Yes, sir.

Q. Will you please tell us what you mean by that?

A. I mean——

Mr. Mouritsen (Interrupting): Objected to as already asked and answered.

Mr. Clark: I submit it.

Trial Examiner Lindsay: He may answer.

The Witness: I mean I am absolutely sure that no mention of Harry Lee Martin was made at that meeting.

Mr. Clark: All right.

Q. Now, am I also correct in stating that no mention of Harry Lee Martin's name was likewise made—withdraw that.

Am I also correct in stating that no mention of Harry Lee Martin was made at the directors' meeting of January 26th?

Mr. Mouritsen: Objected to as leading and suggestive.

Mr. Clark: It is redirect examination. I will withdraw the question.

Q. Will you state whether Harry Lee Martin's name was mentioned at the directors' meeting of January 26th, two days prior to the executive committee meeting?

(Testimony of Harold E. Botts.)

A. It was not mentioned, and to my recollection it has never been mentioned; the name of Harry Lee Martin has never been mentioned previous to this barbecue on the Salyer ranch [2339] of January 30th.

Q. I see.

What do you mean by that, please?

Mr. Mouritsen: I will move to strike that part of the question as not in response to the answer on the ground it is not responsive in that——

Mr. Clark (Interrupting): It may go out, Mr. Examiner, and let me have the question again and the answer.

Trial Examiner Lindsay: Yes, read the question and answer.

(The record referred to was read by the reporter, as set forth above.)

Mr. Clark: The answer may go out.

May I have the answer to that question, please?

The Witness: His name was not mentioned.

Mr. Clark: All right.

Q. Then am I correct in stating, Mr. Botts, that the first you heard about Harry Lee Martin speaking at any barbecue was when you saw him there at the Salyer ranch on the evening of January 30th?

A. That is correct.

Q. By the way, had you known Mr. Martin prior to this time? A. I have.

Q. Will you please tell us whether or not he is engaged in farming in this community? [2340]

(Testimony of Harold E. Botts.)

Mr. Mouritsen: Objected to as incompetent, irrelevant and immaterial.

Mr. Clark: Well, I think it is quite pertinent, Mr. Examiner, so long as he is a man of mystery.

Trial Examiner Lindsay: He may answer.

The Witness: I have never known of him in that connection previous to this barbecue of January 30, 1938—1939.

Q. (By Mr. Clark) Did you know whether or not he represented any financial institution in Los Angeles which owns a ranch or ranches here in this vicinity?

A. I learned it afterwards. I didn't know it previous to that meeting.

Q. I see.

Now, just so we may be sure about it, Mr. Botts, I want to ask you again whether you personally took any part whatsoever in the events which have been described in this case as having occurred at the Boswell plant on the morning of January 30th.

Mr. Mouritsen: Objected to as already asked and answered.

Mr. Clark: Not by me.

Trial Examiner Lindsay: He may answer.

The Witness: No, I had no connection with it.

Mr. Clark: All right.

Q. And did you have any connection whatsoever with those [2341] events in your capacity as secretary of the Associated Farmers of Kings County, Incorporated?

A. Can I have that question read?

(Testimony of Harold E. Botts.)

(The question referred to was read by the reporter, as set forth above.)

The Witness: The event—referring to——

Q. By Mr. Clark (Interrupting): I mean at the Boswell plant on the morning of January 30th.

A. No, I had no connection with it.

Q. And so far as you know, did any other officer of the Associated Farmers of Kings County have any connection with asking the pickets to leave the Boswell plant on the morning of January 30th?

A. No, not to my knowledge.

Q. Will you state whether or not the Associated Farmers of Kings County, Incorporated, in any way, manner, shape or form had anything to do with asking the pickets to leave the Boswell plant on the morning of January 30, 1939?

A. They had nothing to do with it as far as I know.

Mr. Clark: Very well. That is all.

Recross Examination

Q. (By Mr. Mouritsen) Now, Mr. Botts, you understand the sanctity of the oath you have taken in this regard, is that correct?

A. I do. [2342]

Q. And you realize that if a man makes a wilful misstatement of the facts or if he wilfully withholds information that he has, he is subject to prosecution?

Mr. Clark: I object to that on the ground it is

(Testimony of Harold E. Botts.)

absolutely uncalled for with respect to this or any other witness, and is an improper way of addressing a witness. He is presumed to speak the truth and if he doesn't, everybody knows that he has to suffer the consequences.

Mr. Mouritsen: Well, I just want the witness to understand the matter.

Mr. Clark: That doesn't add anything.

Trial Examiner Lindsay: He may answer the question.

The Witness: What was the question referred to?

(The question referred to was read by the reporter, as set forth above.)

The Witness: I do.

Mr. Clark: I object to that as improper recross examination.

Trial Examiner Lindsay: He may answer.

Q. (By Mr. Mouritsen) Now, I will direct your attention to page 2292 of the official transcript for June 10, 1939, volume 17.

Trial Examiner Lindsay: May I just make one short statement?

It is difficult to properly pass upon objections when not [2343] made at the proper time. Now, after a question has been answered, the proper thing to do if you wish to preserve the record is to make a motion to strike. Now, I have ruled that he may answer that question, and I believe he did answer it, and subsequent to the answer you made

(Testimony of Harold E. Botts.)

a second objection, Mr. Clark, so the record——

[2344]

Mr. Clark (Interrupting): I didn't mean to, and I will withdraw it if there is a second objection in there. I simply—well, may I have the page of the transcript you are referring to, Mr. Mouritsen?

Mr. Mouritsen: Page 2292, line 21, beginning at line 21.

Do you have it, Mr. Clark?

Mr. Clark: Yes, line 21.

Mr. Mouritsen: Beginning with line 21.

Q. Now, at that time, Mr. Botts, I asked you the question:

“Now, Mr. Botts, I will ask you if at that time it wasn't discussed that Mr. Harry Lee Martin would be a later speaker for the Associated Farmers?”

Answer by yourself: “I don't recall that.”——

Mr. Clark (Interrupting): May I have the witness's attention called to the time this is directed to?

Trial Examiner Lindsay: It is directed to him in the record there.

Mr. Clark: There is nothing in it to indicate the time. Let us have it.

Mr. Mouritsen: If I can have an opportunity to read the transcript without being continually interrupted, Mr. Examiner, I can complete the examination of this witness in short order. But counsel continuously breaks in and makes statements and interrupts, and I can't do a thing.

(Testimony of Harold E. Botts.)

Trial Examiner Lindsay: Now, I think in all fairness that [2345] the record is there, and I would like to have the record read without statements being made in the presence of a witness.

Now, if you wish to object to reading the record, that is another matter.

Mr. Clark: I have no objection to it. I simply wanted the time indicated.

Mr. Mouritsen: Well, I will continue with the reading of it.

Trial Examiner Lindsay: Read the record as it is.

Q. (By Mr. Mouritsen) The question from myself to you:

“Q. Now, Mr. Botts, I will ask you if at that time it wasn’t discussed that Mr. Harry Lee Martin would be a later speaker for the Associated Farmers?”

By yourself:

“A. I don’t recall that. I would say no if I was to be definite, but I wouldn’t want it to be definite. I don’t think Harry Lee Martin’s name was mentioned.”

Now, as I recall the testimony at that time, it was with reference to this meeting of January 28th, 1938, at Peden’s Cafe—and I will ask counsel if he won’t stipulate that that is the context?

Mr. Clark: Yes, I think that is right.

Q. (By Mr. Mouritsen) Now, I will ask you if you recall giving that testimony that I read to you, on Saturday morning, June 10th, 1939? [2346]

(Testimony of Harold E. Botts.)

Mr. Clark: Now, before the witness is called upon to answer that question, Mr. Examiner, I suggest that counsel follow the proper method of impeaching the witness, and that is to show him the testimony upon which he is being questioned so he has a chance to examine it.

Trial Examiner Lindsay: Yes; he may do that.

Mr. Mouritsen: I will accept Mr. Clark's suggestion.

Q. Now, Mr. Witness, I indicate to you on page 2292 the portion of the testimony that I just read to you, and it continues over on page 2293 to line 1—and disregard the crowsfeet.

Do you recall giving that testimony on Saturday morning? A. I do. [2347]

Q. (By Mr. Mouritsen) Now, with reference to Harry Lee Martin's name, I believe you stated that your recollection was refreshed in that regard by my showing you Board's Exhibit 29 for identification, the article contained therein, is that correct?

A. Yes.

Q. Now, was that the only thing that refreshed your recollection with reference to Harry Lee Martin, that is, my showing you the article in Board's 29 for identification?

A. Was that the only thing? Was that the question?

Q. That is, as I understand it, the question.

A. No, I wouldn't say that was the only thing.

Mr. Mouritsen: I think that is all.

(Testimony of Harold E. Botts.)

Mr. Clark: No further questions.

Trial Examiner Lindsay: That is all.

(Witness excused.)

Mr. Clark: Mr. Examiner, we will call Mr. Mouritsen, please, on behalf of all respondents.

FRANK A. MOURITSEN

called as a witness by and on behalf of all respondents, having been first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Clark) Mr. Mouritsen, you are an attorney at law, [2348] of course?

A. Yes, Mr. Clark?

Q. And you are employed by the National Labor Relations Board, are you? A. That is correct.

Q. And will you please state whether or not you have been in active charge of the preparation and presentation of the case which is now on trial before the Examiner?

A. Well, in general, yes. I have had part of the preparation of the case.

Q. I see.

I am *correcting* stating, am I not, that you have during the trial examined Mr. W. R. Johnston, one of the witnesses produced on behalf of the Board, that is, on the stand?

A. Yes. I recall examining Mr. Johnston.

Q. Will you please tell us whether or not prior to

(Testimony of Frank A. Mouritsen.)

June 5, 1939, which I believe is a week ago today you discussed this case in any manner whatsoever with the witness Johnston.

A. (Pause) I am not certain in that regard, Mr. Clark. As I told you before, I have had only part of the preparation. You see, the usual procedure in investigating these cases is that a field examiner first appears upon the scene and talks with the people preferring the charges, and also talks with the employer in order that he may obtain a fair and impartial picture. He often takes statements from witnesses that are [2349] later turned over to me.

Now I don't—whether Mr. Johnston talked with me before that time or whether he merely talked with an Examiner, I am not certain. I have Mr. Johnston's statement. I don't know whether it is dated or not.

Q. All right.

Now, let me direct your attention, Mr. Mouritsen, to the record in this case which shows that Mr. Johnston testified on behalf of the Board on May 19th of this year, which is now some four or five weeks ago, and that on that occasion he was examined, that being the first time he was called to the stand.

Can you tell us whether or not, or do you have anything other than what you have just given us with respect to whether or not you talked to Mr. Johnston prior to that time?

A. Mr. Clark, in that respect I will state that

(Testimony of Frank A. Mouritsen.)

I have no definite recollection of talking with Mr. Johnston. However, in view of the fact that I invariably go over my case with each witness and in view of the fact that I cross examine him as to any statement that he has made, I would say that before that time I had talked with Mr. Johnston.

Q. Very well.

Now, am I also correct in stating that on that occasion, that is, when Mr. Johnston took the stand in this case on May 19, you examined him from a statement which had thereto- [2350] fore been furnished to you by some representative of the Board?

A. Well, now, I am afraid I don't get that question.

Mr. Clark: May I have it read back, Mr. Examiner?

Trial Examiner Lindsay: Yes.

(The record referred to was read by the reporter, as set forth above.)

The Witness: Yes, that is correct.

Q. (By Mr. Clark) And can you tell us whether or not, Mr. Mouritsen, Mr. Johnston had talked to that representative who procured the statement prior to the time you put him on the stand here?

A. Of course, Mr. Clark, that would be based also on hearsay, and I have heard you object very strenuously to the introduction of that type of evidence, but I would say he probably did talk.

Q. Have you the statement here?

A. I believe I have.

(Testimony of Frank A. Mouritsen.)

Q. May I have the date of it, if it has a date. I don't care to look at it.

A. They are in the other folder, Mr. McTernan, labeled "Statement of witnesses."

Mr. McTernan: It is not dated.

The Witness: Will you show it to Mr. Clark, please, Mr. McTernan? [2351]

(The document referred to was passed to Mr. Clark.)

Q. (By Mr. Clark) Do you know who took this statement?

A. That I don't, Mr. Clark. I may have taken it myself or it may have been taken by one of the field examiners who made the examination that led to this hearing.

Q. All right.

At any rate it was taken some time previously to May 19th when Mr. Johnston took the stand and testified?

A. That is correct.

Q. Now, between that time, Mr. Mouritsen, and June 5th, which is a week ago last Monday, and at which time Mr. Johnston was recalled as a witness for the Board, do you know whether you talked further with him concerning this case?

A. With reference to that, Mr. Clark, my impression is that I did not. I do recall that at the time that Mr. Farr and Mr. Johnston were called I believe I made the statement that we were calling them out of order in order that they could take employment elsewhere. Now as I recall, Mr. Farr and

(Testimony of Frank A. Mouritsen.)

Mr. Johnston left immediately after they testified and were employed some place in Hanford, I believe. I then wrote to Mr. Farr who had an address there, who left me his address, and asked when Mr. Johnston could return for the Associated Farmers' part of the case.

Q. I see.

A. And my impression is that I only saw him on the morning on which he testified the second time, which I believe you [2352] said was June 5, 1939.

At that time, I believe my only conversation with him was "Are you prepared to go on at this time," or "Can we take you at this time," or something of that sort.

Q. So far as you recollect now, you didn't discuss his testimony with him at that particular time?

A. No, I don't believe I did.

Q. All right.

Do you know where Mr. Farr and Mr. Martin are employed in Hanford?

A. Well, I think, Mr. Clark, I would have to object to that as an immaterial question. I do have it, but I don't think it would serve any purpose in revealing it to you. There have been people in this case who have been discriminated against or have been treated differently than in an ordinary way, because of Union membership.

Mr. Clark: I will ask that that go out, Mr. Examiner.

Trial Examiner Lindsay: It may stand.

(Testimony of Frank A. Mouritsen.)

Mr. Clark: As a conclusion of this witness.

Trial Examiner Lindsay: The objection is sustained.

Mr. Clark: May the answer go out? There was a motion to strike.

Trial Examiner Lindsay: I understand. There was also an objection to answering.

Mr. Clark: I see.

Trial Examiner Lindsay: Made by the witness himself and—— [2353]

Mr. Clark (Interrupting): And you are sustaining Mr. Mouritsen's objection?

Trial Examiner Lindsay: I sustained his objection.

Mr. Clark: Then may the answer go out?

Trial Examiner Lindsay: Yes.

Mr. Clark: Very well.

I will be just one minute, Mr. Examiner. I am trying to find some testimony here.

Now, I call to the Examiner's attention with respect to the last question which asked for the place of employment of Mr. Johnston and Mr. Farr, the fact that on May 19th, 1939, Mr. Johnston in response to this question put by me, testified as follows—this is on page 230 of the transcript, line 15——

“Q. (By Mr. Clark) Mr. Johnston, are you employed at the present time? “A. What?

“Q. Are you employed at the present time?

“A. No, sir.”

(Testimony of Frank A. Mouritsen.)

I just want your Honor to have that in mind in ruling on my request made of Mr. Mouritsen to give us the place where the gentleman apparently is now employed so as to find out if he was employed at the time he testified.

The Witness: I will withdraw my objection, Mr. Clark, and answer that I don't know; that the only address that Mr. Farr left me, as I recall, was General Delivery, Mendota. [2354]

Q. (By Mr. Clark) I see.

You do know that he is employed now, and that is the reason you let him go at the time he first testified, I think you said?

A. I let him go for the purpose of taking up this employment.

Mr. Clark: I see. Now, I suggest if your Honor will take the noon recess I can locate the testimony given by Mr. Farr that I want to examine Mr. Mouritsen on.

Trial Examiner Lindsay: Yes.

Off the record.

(Discussion outside the record.)

Trial Examiner Lindsay: We will adjourn until 2:00 o'clock.

(Thereupon, at 12:05 o'clock P. M., a recess was taken until 2:00 o'clock P. M. of the same date.) [2355]

After Recess

(Whereupon, at 2:00 o'clock p. m., the hearing was resumed, pursuant to the recess.)

Trial Examiner Lindsay: Hearing called to order.

Mr. Clark: The respondents are ready, Mr. Examiner.

Mr. Mouritsen: Ready for the Board, Mr. Examiner.

FRANK A. MOURITSEN

the witness on the stand at the time of recess, having been previously duly sworn, resumed the stand and further testified as follows:

Direct Examination

(Continued)

Q. (By Mr. Clark) Now, Mr. Mouritsen, will you please state whether or not you know where Mr. Farr was working—withdraw that.

Will you please state, if you know, where Mr. Farr was working on May 22, 1939, when he testified in this case?

A. Did he testify on the 22nd of May?

Q. Yes. The record shows that he testified on May 22, 1939.

A. Here is my recollection as to that——

Mr. Clark (Interrupting): Page 300, Mr. McC Ternan.

The Witness (Continuing): At the beginning, on or about May 18th, at the time we started the case, Mr. Farr and Mr. Johnston came to me and told me that they were just about to secure employment. [2356]

(Testimony of Frank A. Mouritsen.)

Q. (By Mr. Clark) I see.

A. And in order that it might not be interrupted by having them recalled, since the place, I think Mendota, is about 100 miles away, that if I could take them at that time, put them on right at the beginning of the case, they would appreciate it. I think that was the statement I made at the time.

Q. All right.

A. In other words, they were just going to take employment at that time.

Q. I see.

And did you know where Mr. Farr has been employed since that time?

A. No, I don't, other than it is near—I suppose—Mendota, since *that where* he picked up his mail.

Mr. Clark: That is all.

Cross Examination

Q. (By Mr. McTernan) Was Johnston employed on May 19th when he testified here?

A. My information was that he was not, that he wanted to be put on at that time in order that he might subsequently take this employment that he had secured.

Q. The same applies to Mr. Farr? A. Yes.

Mr. McTernan: That is all.

Mr. Clark: No further questions.

(Witness excused.) [2357]

Mr. Clark: Now, Mr. Examiner, as a part of the Associated Farmers' case, that is, the Associated

Farmers of Kings County, I would like to be sworn.

Mr. Mouritsen: I will waive the oath with reference to Mr. Clark, Mr. Examiner.

Mr. Clark: I would rather take it.

WEBSTER V. CLARK

called as a witness by and on behalf of the Associated Farmers of Kings County, Inc., having been first duly sworn, was examined and testified as follows:

Direct Examination

The Witness: Mr. Examiner, my name is Webster V. Clark. I am attorney at law and have been admitted to practice in all of the courts of this State since 1924, that is, for the past fifteen years; also in the Federal Courts, that is, the United States District Court for the Northern and Southern Districts of California and on motion in the United States District Court for the District of Oregon.

I also have conducted litigation, or rather done law work, in the State of Pennsylvania.

My office is at 111 Sutter Building in San Francisco, and I am a member of the firm of Rogers and Clark.

On last September, September of last year, I completed a three-year term representing the City and County of San Francisco on the Board of Governors of the State Bar of this [2358] State.

I would like to state for this record, Mr. Examiner, and directing my testimony particularly to the

(Testimony of Webster V. Clark.)

afternoon of Friday, June 2nd of this year, which was a week ago last Friday, that so far as I remember I was never present at any conversation held between Mr. Bill Boswell, Lloyd Liggett, Forrest Riley, E. C. Salyer, and myself and Mr. Painter of my office and that at no time in my hearing did Mr. E. C. Salyer state, in substance or effect: "I really got them told, didn't I?" Nor did Mr. Salyer say, in substance or effect, "We all tell the same story and the case will have to go just as we tell it," nor did Mr. Lloyd Liggett state in my hearing, in substance or effect, "I am going to get up and tell the same story that you guys told and get plenty tough with them," nor did any one of those people nor anyone else at that time or place or at any other time laugh as the result of any such remarks. [2359]

What did happen, and of which I have a very clear recollection on, was that after Mr. Salyer testified and your Honor ordered a recess during the afternoon of Friday the 2nd, I believe it is, June 2nd, I stepped out in the yard in front of the hall and there was grouped there indiscriminately men who had testified in support of the Union in this case, and also people who were identified with the Respondent side of the case. I don't remember whether I saw Mr. Winslow, but I think that I can be certain that there were certainly members of the Union standing quite close to me.

I walked up to Mr. William Boswell who, as I understand it, is the head of the cattle department

(Testimony of Webster V. Clark.)

of the Boswell Company, and simply to talk with him, and he at that time introduced me to his son, and asked me to a barbecue luncheon which was being given the following day, Saturday, at the Reden ranch for a youngster's organization called the Future Farmers, which, he said, would be two or three hundred youngsters there; and he asked me to come if I wasn't doing anything.

I told Mr. Boswell that I hoped to catch the 11:00 o'clock train out for San Francisco, and that in the event I didn't catch it, if we were held up here and I felt well enough to go, I would come to the Reden ranch.

At that moment I distinctly remember E. C. Salyer, who had just been on the stand, coming up and taking me by the arm and saying in substance to me that it might look foolish, but [2360] he actually couldn't remember the persons present or concerning the matters on which he was being questioned. And in response to that, I said to Salyer in an ordinary tone of voice, so that anyone could hear, in substance: "Well, that is all right, E. C.; you do the best you can and you will be all right."

Now, that is what actually happened and that is all that happened, and if Mr. Winslow had any other understanding, he is simply mistaken.

You may cross examine.

Mr. Mouritsen: No questions.

(Witness excused.)

Mr. Clark: Mr. Painter, please?

Mr. Mouritsen: I will waive the oath, Mr. Examiner.

Mr. Painter: I will take it.

JOHN PAINTER

a witness called by and on behalf of the Respondent, Associated Farmers of Kings County, Inc., being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Clark) Mr. Painter, am I correct in stating that you are a duly admitted attorney at law in all of the courts of this State?

A. That is correct.

Q. You are likewise admitted to the United States District Court for the Northern District of California? [2361]

A. That is right.

Q. And are you employed by my office, namely, Rogers and Clark of San Francisco?

A. I am.

Q. And have you been associated with me in the trial of this case?

A. I have been so connected.

Q. Directing your attention to the afternoon recess on Friday, June 2nd, in this matter, I will ask you whether you were present at any time during that recess at any conversation between Bill Boswell, Lloyd Liggett, Forrest Riley, E. C. Salyer, myself and yourself?

(Testimony of John Painter.)

A. I don't recall any conversation with that group. [2362]

Q. At any time during that recess, Mr. Painter, will you please tell us whether Mr. E. C. Salyer said in your hearing in substance or effect, "I really got them told, didn't I?"

A. No such statement was made within my hearing at any time.

Q. And will you please tell us whether or not at that time and place Mr. Salyer stated in substance or effect, "We all tell the same story and the case will have to go just as we tell it?"

A. No such statement as that was made in my hearing at any time.

Q. Will you please state whether or not at that time or place in your hearing Mr. Lloyd Liggett stated in substance or effect, "I am going to get up and tell the same story that you guys told and get plenty tough with them?"

A. No such statement as that was made at any time within my hearing.

Q. Will you please state to the Examiner what you heard at the recess on Friday, June 2nd, if it is material?

Go ahead and tell us.

A. I don't recall any particular conversation at that recess. I don't recall being within a group of all of those people. It may be possible that I talked with some of them, and I couldn't repeat my conversation, but I do know that no such conversation as that was ever—ever took place in my [2363]

(Testimony of John Painter.)

hearing at that time or at any other time during this trial.

Mr. Clark: You may cross examine.

Mr. Mouritsen: No questions.

Mr. Clark: That is all.

(Witness excused.)

Mr. Clark: With respect to Mr. William Boswell on the same subject matter, Mr. Examiner, and with the exception of the motion to strike which was reserved this morning, that completes the defense of the Associated Farmers of Kings County. With respect to the balance of the case, I would like to make this statement: That where evidence bears upon the credibility of witnesses, anything of that sort, I intend that that evidence shall apply equally to the Associated Farmers' case.

My statement that this completes the defense of the Associated Farmers means really that this is all of the direct evidence we are going to put on in support of the Farmers with one exception, which I just forgot. I would like to call Mr. Robinson, please.

Trial Examiner Lindsay: You are recalling Mr. Robinson.

Mr. Clark: I am calling him as a witness on this phase of the case, yes.

LOUIS T. ROBINSON

recalled as a witness by and on behalf of the Associated [2364] Farmers of Kings County, Inc., having been previously duly sworn, was examined and testified further as follows:

Direct Examination

Q. (By Mr. Clark) Mr. Robinson, you have been sworn in this case before, haven't you?

A. Yes, sir.

Q. Will you please state whether or not J. G. Boswell Company, one of the respondents in this proceeding, owns the Reden ranch?

A. They do not.

Q. Am I correct in stating that the Boswell Company does have a lease on the ranch?

A. The Boswell Company leases this ranch for a cattle range.

Q. All right.

Now, at the Boswell ranch are there any buildings or equipment which ordinarily would not be present on a cattle ranch?

Mr. Mouritsen: May the time be fixed?

Q. (By Mr. Clark) Now, and through all of the time we have discussed in this case.

A. You are referring to the Reden ranch?

Q. Yes, I am.

A. Mr. Reden had a duck club at the ranch, and there was rather a club house, and quite a lot of equipment there for [2365] that need.

Q. For entertainment? A. Yes, sir.

Q. And will you please tell us whether there has

(Testimony of Louis T. Robinson.)

been any practice followed since we will say—well, take July 1st of last year, which I think is the first date of any importance in the present proceeding, with respect to allowing different organizations to use the ranch for barbecues?

A. Mr. Reden had been in the habit of doing that, and we continued the practice.

Q. May I have that answer again?

A. Mr. Reden had been in the habit of doing that, and we continued the practice.

Q. Can you state the names of any organizations which have been allowed to have barbecues at the Reden ranch since the first of the present year?

A. Since the first of the present year?

Q. Yes. Take the year 1939.

Mr. Mouritsen: Objected to as immaterial.

Mr. Clark: I simply want to show the practice, Mr. Examiner, because there is some inference that the fact that the Associated Farmers' barbecue was held at the Reden ranch somehow ties in the Boswell Company. There was a question asked on that. That is the purpose of this.

Trial Examiner Lindsay: Well, he may answer. [2366]

The Witness: 1939—I believe I just recall that what I know as the 4-H Club, a group of boys, were allowed to have a barbecue there; the peace officers held a barbecue there, and the Corcoran Social Club known as the Uplifters, held a barbecue.

Q. (By Mr. Clark) And then in the fall of

(Testimony of Louis T. Robinson.)

1938, am I correct in stating that the Associated Farmers held a barbecue there?

A. The Associated Farmers had a barbecue there, and the Company——

Mr. Mouritsen: I object to this as a voluntary statement on the part of the witness. He has answered the question.

Mr. Clark: The Associated Farmers had a barbecue there, was that the answer?

Mr. Mouritsen: Yes.

Q. (By Mr. Clark) In addition to that, am I correct in stating that the Boswell Company employees had held barbecues there on various occasions?

A. The Company gave a barbecue for all of its employees and their families. This was a kind of a compliment to the Company baseball team.

Q. All right.

On any of those occasions, was any charge made by the Company to any of these organizations for the use of the ranch? A. None whatever.

Mr. Clark: That is all. [2367]

Cross Examination

Q. (By Mr. Mouritsen) I believe you stated the Reden ranch is now under lease by the Boswell Company? A. That is correct.

Q. And how long has it been leased by the Boswell Company?

A. Two or three years. I don't remember.

Q. Who is the head of operations for your Company at that ranch? A. W. W. Boswell.

(Testimony of Louis T. Robinson.)

Q. Do you have a foreman at the ranch itself?

A. We usually keep a caretaker there, and a cowboy, if we have cattle.

Q. I see.

A. I don't know whether he is there or not.

Q. But it isn't—you don't operate it as you do some other farms where you carry on farming operations, is that correct?

A. We have no farming operations at all there.

Mr. Mouritsen: I think that is all.

Mr. Clark: No further questions, Mr. Robinson.

(Witness excused.)

Mr. Clark: I will repeat, Mr. Examiner, with the exception of Mr. Boswell that completes the direct showing as far as the Associated Farmers of Kings County is concerned, and I again state that I would like it understood, however, that as to the evidence that comes in respecting the balance of the case, any- [2368] thing bearing upon the credibility of witnesses, or anything relevant to the Associated Farmers' case, is intended by me to be relied on in defense of that case.

Mr. Mouritsen: How about Mr. Botts?

Mr. Clark: I will turn him over to you. He is here, and so are the checks and so is the form of application.

I don't think Mr. Botts' cross examination was completed, Mr. Examiner, because there were certain demands left with us to comply with during the noon hour.

Mr. Mouritsen: Then could we recall Mr. Botts at this time?

Trial Examiner Lindsay: I have one question I would like to ask Mr. Robinson.

There is nothing provided in your lease with the owner of the Reden ranch to the effect that you must grant those privileges to hold various types of entertainment upon that ranch, is there?

Mr. Robinson: I didn't make the lease, Mr. Examiner, and have never read it, but I am satisfied that there is nothing in there to that effect.

Trial Examiner Lindsay: There is nothing in there, you say?

Mr. Robinson: Nothing in there requiring us to do that.

Trial Examiner Lindsay: All right.

Mr. Clark: Mr. Botts. [2369]

HAROLD E. BOTTS

recalled to the stand by and on behalf of the Respondent, Associated Farmers of Kings County, Inc., having been previously duly sworn, was further examined and testified as follows:

Cross Examination

(Continued)

Q. (By Mr. Mouritsen) Now, Mr. Botts, when you were on the stand this morning, you were requested to bring to the hearing all cancelled checks of the Associated Farmers of Kings County, Inc.

(Testimony of Harold E. Botts.)

from the beginning of that organization until the present time.

Do you have those cancelled checks with you?

A. I have turned them over to Mr. Clark.

Mr. Clark: I will state for the record, Mr. Mouritsen, that I have here what purports to be all the cancelled checks of the Associated Farmers of Kings County, Inc. from the beginning of the organization up to the present time, the exact dates being October 19th, 1938 up to and including June 7th, 1939. [2370]

Trial Examiner Lindsay: May I off the record make a suggestion?

Mr. Clark: Yes.

(Discussion outside the record.)

Trial Examiner Lindsay: On the record.

Mr. Clark: Also in connection with the demands made this morning upon Mr. Botts, I will now hand to counsel a form of application for membership of the Associated Farmers of Kings County, Inc., a blank which I have just removed from a book containing similar blank applications handed me by Mr. Botts.

Those are all the same in the book?

The Witness: Yes, all printed at the same time.

Mr. Mouritsen: May the blank that counsel has handed to me be marked Board's 30 for identification?

(Testimony of Harold E. Botts.)

(Thereupon the document above referred to was received and marked as Board's Exhibit No. 30 for identification.)

Q. (By Mr. Mouritsen) Now, Mr. Botts, I will show you a document that has been marked Board's Exhibit 30 for identification, and ask you if that is the application blank used by the Associated Farmers of Kings County, Inc., from November 1938 to the present time?

A. That is the same form. I believe there is another of a different print that has, in substance, this additional information: "50 cents of the amount paid will apply to a year's subscription to the Associated Farmers publication." [2371] That is the only difference.

Q. Well, during the year 1938 isn't it true that you used application blanks that were considerably larger than Board's Exhibit 30 for identification and were yellow in color?

A. Not to my recollection.

Q. Well now, just how long have you been using Board's 30 for identification?

A. I ordered those printed—offhand I would say some time around the 10th of October.

Mr. Clark: Of last year?

Q. (By Mr. Mouritsen) Of what year?

A. 1938, and the second group was ordered printed some time, I would say, in the month of February—near the month of February.

Q. Of 19—

(Testimony of Harold E. Botts.)

A. (Interrupting) 1939, both printed locally.

Mr. Mouritsen: I will offer Board's 30 for identification in evidence.

Mr. Clark: Objected to on the ground it is incompetent, irrelevant and immaterial.

Trial Examiner Lindsay: Board's 30 may be received.

(Thereupon the document above referred to was received and marked as Board's Exhibit No. 30.)

Q. (By Mr. Mouritsen) Well, no matter whether a dollar or \$100 is paid by the applicant, you say 50 cents of that goes [2372] into—what was that?

A. A subscription, yearly subscription, to the publication put out by the Associated Farmers.

Q. And that publication is put out by the state organization, is that correct? A. Yes.

Q. You remit that subscription money to the state organization upon receipt of the application?

A. That is correct.

Mr. Mouritsen: Now, perhaps we could take a short recess, Mr. Examiner, for the purpose of getting together about the checks.

Trial Examiner Lindsay: Yes.

Mr. Clark: Very well.

(At this point a short recess was taken, after which proceedings were resumed as follows:)

Trial Examiner Lindsay: Hearing called to order.

(Testimony of Harold E. Botts.)

Mr. Mouritsen: Mr. Examiner, may the record show that during the recess Mr. Clark and I have consulted regarding the cancelled checks of the Associated Farmers of Kings County, Inc., from its inception to the present time; that he has turned over to me all cancelled checks except one that has reference to payment to himself; and I am not pressing that matter at all; otherwise that he has turned over to me [2373] all cancelled checks of the Association from its inception to the present time.

Trial Examiner Lindsay: All right.

Q. (By Mr. Mouritsen) Now, Mr. Botts, I show you a canceled check and ask you if that is your signature that appears on it?

A. (Examining document) It is.

Q. And you will note that it is made out to Mickey Willis, is it not?

A. (Examining document) Yes, it is.

Q. Can you state the circumstances under which, or the payment for what that was given to Mr. Mickey Willis?

Mr. Clark: May we have the date indicated, Mr. Examiner.

Trial Examiner Lindsay: Yes.

Mr. Mouritsen: The check bears date February 16, 1939.

Q. Isn't that correct?

A. (Examining document) Yes.

This check was made out to Mickey Willis to cover his labor and, I believe, another Willis boy

(Testimony of Harold E. Botts.)

during the—for helping in the parking of the cars at the barbecue at the Salyer's ranch on the night of February 14th and also for helping clean dishes and clean up around there.

Q. Now, wasn't Mr. Willis at that time a member of the Associated Farmers?

A. For your information, Mickey Willis is a high school boy. [2374]

Q. Well, I will still ask you if at that time he wasn't a member of the Associated Farmers.

A. He is not a member at the present time.

Q. You don't patronize home industry?

A. He was not a member.

Mr. Clark: May I have the answer?

The Witness: He was not a member.

Q. (By Mr. Mouritsen) Now, Mr. Botts, I will show you a check dated October 25, I believe, 1938, made out to R. Knudsen; K-n-u-d-s-e-n, in the amount of \$174.98, and ask you if that is your signature that appears upon the check.

A. (Examining document) That is my signature.

Q. Do you recall the purpose for which that expenditure was made? A. Yes.

Q. Will you state what?

A. Mr. Knudsen at that time was operating a store, and the amount of that check was the amount of the groceries and foodstuffs purchased from Mr. Knudsen in connection with the barbecue held on the Reden ranch on October 18, 1938.

Q. Now, Mr. Botts, I will ask—I will show you a

(Testimony of Harold E. Botts.)

check dated December 19, 1938, and made out to Harold E. Botts, and ask you if that is your signature that appears thereon.

A. (Examining document) It is. [2375]

Q. Now——

Mr. Clark (Interrupting): May I have the date again, please? I missed it.

Mr. Mouritsen: December 19th, 1938.

Q. And I will ask you, Mr. Botts, if the amount of that check had anything to do with the matters that have been under investigation at this hearing?

A. No, it had not.

Mr. Clark: May I have that answer, please?

The Witness: No, it had not.

Mr. Mouritsen: And finally, I will ask that this document be marked Board's Exhibit 31 for identification.

(Thereupon, the document above referred to was marked as Board's Exhibit No. 31 for identification.)

Mr. Clark: May I have the last question and answer read, your Honor?

Trial Examiner Lindsay: Yes. Read the question and answer.

(The record referred to was read by the reporter, as set forth above.)

Q. (By Mr. Mouritsen) Now, Mr. Botts, I will show you a check that has been marked Board's Exhibit 31 for identification, and ask you if that is your signature that appears on the check?

(Testimony of Harold E. Botts.)

A. (Examining document) It is.

Q. Are you acquainted with the signature of J. B. Boyett? A. Yes. [2376]

Q. I will ask you if that is his signature that appears on the check?

A. (Examining document) Yes.

Q. The check is made out to the Pacific Tent & Awning Company, is it not? A. Yes.

Q. I will ask you if that check wasn't given in payment of the rental of the tent that appeared on Salyer's ranch from January 30th, 1939 to February 23rd, 1939?

A. Would you repeat that again?

(The question referred to was read by the reporter, as set forth above.)

The Witness: No, it was not. There was no rental.

Q. (By Mr. Mouritsen) Well, I will ask you, then, if it wasn't in payment of the cost of transporting that tent to the Salyer ranch and returning it to Fresno? A. It was.

Q. And other than \$50.00, there was no cost connected with the transportation or the setting up of that tent on the Salyer ranch, was there?

A. Not to my knowledge.

Trial Examiner Lindsay: You have not offered that.

Mr. Mouritsen: Oh, at this time, Mr. Examiner, I will offer as Board's Exhibit 31 the document marked Board's Exhibit 31 for identification. [2377]

(Testimony of Harold E. Botts.)

Mr. Clark: To which we object, Mr. Examiner, on the part of all Respondents, on the ground it is incompetent, irrelevant and immaterial, no connection shown, and as to the Respondent Boswell Company and the Corcoran Telephone Exchange, upon the ground of hearsay.

Trial Examiner Lindsay: Board's Exhibit 31 is received in evidence.

(Thereupon, the document above referred to was received in evidence and marked as Board's Exhibit No. 31.)

Mr. Mouritsen: May the record show that I at this time return to Mr. Clark all other cancelled checks of the Associated Farmers of Kings County, Inc., which he previously furnished me, except Board's Exhibit 31.

Mr. Clark: Thank you.

Trial Examiner Lindsay: The record may so show. [2378]

Mr. Mouritsen: You may inquire.

Redirect Examination

Q. (By Mr. Clark): Since going through these checks during the noon hour, are you able now to definitely tell us the date upon which the barbecue held by the Associated Farmers of Kings County and heretofore placed as having occurred sometime in the middle of February, 1939, was, in fact, held?

A. My recollection is February 14th.

Q. February 14th? A. 1939.

Q. All right.

(Testimony of Harold E. Botts.)

Now, directing your attention to the check which has been marked Board's Exhibit No. 31, a check for \$50.00, to the Pacific Tent & Awning Company, I am correct in stating, am I not, that this check is dated June 1st of this year? A. It is.

Q. And that, of course, was the date upon which the payment was made to the Pacific Tent & Awning Company, is that right?

A. That is correct.

Q. Now, can you tell us, if you are able to do so, what arrangement was made with the Pacific Tent & Awning Company concerning the tent on the Salyer ranch which resulted in the Associated Farmers of Kings County making this payment on June 1st of this year?

A. I could tell what the arrangement was. [2379]

Q. First of all, can you tell us approximately when that arrangement was made?

A. Approximately—well, I would say between the 5th and 10th of February.

Q. All right.

In other words, am I correct in stating that whatever arrangement was made between the Associated Farmers of Kings County and the Pacific Tent & Awning Company with respect to that tent, was subsequent to January 30th of this year?

A. Yes, sir.

Q. And subsequent to the time the tent had actually been pitched on the Salyer ranch, is that true?

(Testimony of Harold E. Botts.)

Mr. Mouritsen: That is objected to as very leading and suggestive. After all, Mr. Botts is Mr. Clark's witness.

Mr. Clark: Well, I submit that, your Honor.

Trial Examiner Lindsay: Let us not lead the witness.

Mr. Clark: Very well. May I have the question read back?

(The record referred to was read by the reporter, as set forth above.)

Mr. Clark: May I have that answer, your Honor, and from there on I will go back to the direct examination method of examining.

The Witness: I don't believe he read the whole question.

Mr. Clark: I will withdraw that.

Q. When was it with respect to the time the tent was first [2380] pitched or set up on the Salyer ranch that the first contact with the Pacific Tent and Awning Company was made by the Associated Farmers of Kings County in this respect?

A. I would say a week later; at least a week later.

Q. All right.

Now, can you tell us what that arrangement was, and how it came about?

A. The records will show that on our Director's meeting held in Hanford on January 26th, it was decided that some time during the month of February, preferably along toward the middle of Feb-

(Testimony of Harold E. Botts.)

ruary, in the middle of the month of the campaign for membership, it was decided to hold a public meeting. That is in the rainy season. At the previous barbecue at the Reden ranch, we had some place in the neighborhood of five to six hundred. That was out of doors. We looked around, and there was no place available that would hold anywhere near the equal number. We expected an attendance some place between four and six hundred. There was no place in the City of Corcoran or close by that would accommodate 600 people, and it was brought to our attention that the tent on the Salyer ranch would hold approximately that number.

Q. All right. Now, at the time it was brought to your attention, was the tent set up on the Salyer ranch? A. It was. [2381]

Q. Was this subsequent to January 30th?

A. It was.

Q. All right.

What if anything did you do then in that regard?

A. We made—it was offered to us for use if we would simply pay the cost of erecting and taking it down.

Q. By whom was it offered?

A. The cost of erecting and putting it down was the charge made upon it by the owners, the Pacific Tent & Awning Company.

Q. You say an offer was made, free of charge, except for the cost of transporting and putting it up and taking it down.

(Testimony of Harold E. Botts.)

Who made that offer to you.

A. I can't tell you definitely who made that offer. It wasn't made to me personally. That was my understanding of it.

Q. I see.

Do you know to whom it was made?

A. Not positive; not absolutely. I think it was made to Mr. Boyett. I heard of the offer second-hand.

Q. All right.

Well, who was this offer supposed to have come from; someone of the Pacific Tent & Awning Company?

Mr. Mouritsen: I object to that.

Mr. Clark: Withdraw it.

Q. Who was the offer supposed to have come from, so far as you understood it? [2382]

Mr. Mouritsen: I object to that as not the best evidence.

Mr. Clark: Withdraw it. We will get Mr. Boyett here.

Q. Then when was it, Mr. Botts—well, I will withdraw that, the record shows that.

Have you anything else to add to your narrative of the arrangement pursuant to which this check of June 1st of this year was paid?

A. Nothing except that that was the offer made, and we decided to accept that as the only suitable place to house that many people.

Q. All right.

(Testimony of Harold E. Botts.)

And when was that decision reached?

A. I would say sometime during the week preceding February 14th.

Q. Of this year? A. Of this year.

Mr. Clark: That is all.

Recross Examination

Q. (By Mr. Mouritsen): Mr. Botts, the end of January and the fore part of February are also considered as the rainy season in this part of the country, are they not?

A. The end of January and the fore part of February?

Q. Yes.

A. Are considered the rainy season, yes, sir.

Mr. Clark: Are you through, Mr. Mouritsen? [2383]

Mr. Mouritsen: I think I have one or two questions.

Mr. Clark: Very well. I have one question that I left out, and I would like to ask it now, if I may, and then this completes the redirect examination of this witness.

Mr. Botts, after having that check called to your attention, which is Board's Exhibit No. 31, I will ask you again whether the Associated Farmers of Kings County, or anyone on its behalf, had anything whatsoever to do with getting the tent on the Salyer place on January 30th?

A. No, they had no connection with it.

Mr. Clark: That is all.

(Testimony of Harold E. Botts.)

Mr. Mouritsen: Nothing further.

May I have that last question and answer read?

Trial Examiner Lindsay: Yes.

(The record referred to was read by the reporter, as set forth above.)

Mr. Clark: That is, getting the tent brought down to the Salyer place on January 30th?

The Witness: No, the Associated Farmers had no connection with that.

Mr. Mouritsen: You, of course, are speaking only from your own personal knowledge in that regard, Mr. Botts?

The Witness: Yes.

Mr. Mouritsen: I think that is all.

Mr. Clark: No further questions. I think the Examiner has a question, Mr. Botts. [2384]

Q. (By Trial Examiner Lindsay): At what meeting was this matter of paying for the tent discussed?

A. The subsequent meeting—just what do you mean?

Q. Well, paying for the transportation and putting up and taking down of this tent?

A. I don't think we discussed it at any meeting of either the directors or the executive committee.

Trial Examiner Lindsay: May I have that last answer please?

The Witness: I say I don't believe it was discussed at any regular meeting of either the directors or the executive committee. It was simply a

(Testimony of Harold E. Botts.)

matter that was brought up to the various members of the executive committee individually.

Q. (By Trial Examiner Lindsay): Well, when was it brought up?

A. I would say probably during the week preceding February 14th; sometime during the week, several days previous to the barbecue, at least.

Trial Examiner Lindsay: Have you taken all of this witness' testimony concerning the check?

The Reporter: No.

Q. (By Trial Examiner Lindsay): Do you know what date the tent was actually set up at the Salyer ranch?

A. I saw it for the first time around between 4:30 and 5:00 o'clock on the night of January 30, 1939.

Q. Well, do you know whether or not it was set up on—— [2385]

A. (Interrupting): I passed by along that road going to my ranch quite frequently. It wasn't there a day or two days before.

Q. Well, if Mr. Wilbur testified it was set up on the afternoon of January 30, 1939, do you think that would be correct?

A. That is correct, I am sure.

Trial Examiner Lindsay: Now, will you read back what testimony you do have?

(The record referred to was read by the reporter, as set forth above.)

(Discussion outside the record.)

(Testimony of Harold E. Botts.)

(The record referred to was read by the reporter, as follows:)

“Q. Now, can you tell us what that arrangement was and how it came about?

“A. The records will show that on our directors’ meeting held in Hanford on January 26th, it was decided that some time during the month of February, preferably along toward the middle of February, in the middle of the month of the campaign for membership, it was decided to hold a public meeting. That is in the rainy season. At the previous barbecue at the Reden ranch we had some place in the neighborhood of five to six hundred. That was out of doors. We looked around and there was no place available that would hold anywhere near the equal [2386] number. We expected an attendance some place between four and six hundred. There was no place in the city of Corcoran or close by that would accommodate six hundred people and it was brought to our attention that the tent on the Salyer ranch would hold approximately that number.”)

Q. (By Trial Examiner Lindsay): Now, what do you mean by that?

A. What was the question?

Q. What do you mean by that testimony?

A. What do I mean—any particular part of it?

Q. The whole answer about this January 26th meeting.

A. I don’t see anything that isn’t clear there. I

(Testimony of Harold E. Botts.)

simply stated that during that directors' meeting on January 26th it was discussed——

Q. (Interrupting): What was discussed?

A. The question of holding a public meeting, open to the public.

Q. What else was discussed at that meeting?

A. And it was decided that preferably it would be better to hold it somewhere along the end of the month.

Q. What else was discussed at that meeting?

A. No particular location was given as to where the meeting was to be held.

Q. Was there anything else discussed at that meeting?

A. You mean along this line? [2387]

Q. Yes, about the barbecue to be held in February?

A. I don't recall. It was simply what was laid on the table and left at the discretion of the executive committee.

Q. Well, what do you mean it was brought to your attention about this tent?

A. I simply mean this: That the tent was there, erected, standing idle on the Salyer ranch. The offer was made to some of the members of the executive committee of the Associated Farmers that if they were looking for a place to hold a barbecue, they could have this tent free of charge, so—with no rental.

Q. Were you present when that was discussed?

(Testimony of Harold E. Botts.)

A. No, I got that second-hand. It was relayed to me, I believe, by Mr. Boyett.

Q. Well, when did you hear that?

A. Oh, probably during the week, between—we will say February 7th and February 14th.

Q. Now, who was to pay for this tent before you made this arrangement? I mean, the erecting and taking down of that tent.

A. I have no knowledge as to who was to pay for it, no definite knowledge, except possibly by hearsay.

Q. You say the tent was already up before you made any such arrangement to pay for it?

A. Yes, it had been up a week or so. [2388]

Q. Do you know who brought the tent down there?

A. Pacific Tent and Awning Company crew.

Q. The Pacific Awning Company crew brought it down?

A. That is my understanding. They sent down the truck and men to erect it.

Q. And did they come down and get it and take it back?

A. That is also my understanding. I don't know definitely.

Q. How far is it from here to Fresno?

A. 55 miles.

Q. Do you know who the officers of the Fresno company are?

A. No, I don't.

Q. Do you know any of them?

(Testimony of Harold E. Botts.)

A. No, I don't know the personnel at all.

Mr. Clark: That is the Pacific Tent and Awning Company, Mr. Examiner?

Trial Examiner Lindsay: Yes.

Q. Were you ever in their place of business?

A. I have been, yes.

Q. About how many times?

A. I think not over twice in the last ten years.

Q. Have they been in business for more than ten years? A. I don't know.

Q. You don't know anyone connected with the company, that is, the awning company at Fresno.

A. I know one of the salesmen by sight. I don't know his [2389] name.

Q. Did you ever have any business with the awning company in Fresno? A. I have.

Q. Well, who did you deal with?

A. I don't know the man's name. I bought some awning for the house somewhere in the neighborhood of eight years ago.

Q. You don't remember who you bought it from? A. No.

Q. Do you know anyone who made any of the arrangements with the Pacific Awning Company to pay for that service previous to the date they brought it down here?

A. I only know by hearsay.

Q. What do you know by hearsay?

Mr. Clark: I object to that, Mr. Examiner, on the ground it is hearsay as to all respondents.

(Testimony of Harold E. Botts.)

Trial Examiner Lindsay: He may answer.

The Witness: By hearsay I heard it was Forrest Riley. He made the arrangement to bring it down.

Q. (By Trial Examiner Lindsay): Well——

Mr. Clark (Interrupting): May I have the last. I can't hear the witness.

The Witness: I said he evidently made the arrangement to bring the tent down.

Mr. Clark: On the 30th of January? [2390]

The Witness: Yes.

Q. (By Trial Examiner Lindsay): To have it brought down or——

A. (Interrupting): To have it brought down.

Q. Do you know whether or not he made any arrangement with the Pacific Awning Company to pay for the service of bringing it down?

A. I understood it was charged directly to him personally. [2391]

Q. Well, was the service paid for twice?

A. Not to my knowledge, no.

Q. Then do I understand that after Mr. Riley, from what you have said, made the arrangements to have it brought down here and to pay for it himself—or rather, to have it charged to his account, that the Association then paid for it with that check, which is Board's Exhibit 31?

A. After it was offered to him on the basis of that.

Mr. Clark: May I hear that answer? I can't hear a bit of that testimony, Mr. Witness.

(Testimony of Harold E. Botts.)

Trial Examiner Lindsay: Yes.

The Witness: According to the outline I have given in my testimony, then subsequently we paid the cost of erecting and taking it down.

Trial Examiner Lindsay: Instead of Mr. Riley; is that right?

The Witness: That is right.

Trial Examiner Lindsay: That is all.

Mr. Clark: And was that pursuant to the arrangement you have already testified to?

The Witness: Yes, that was in pursuance of the arrangement.

Mr. Clark: Made subsequent to January 30th, is that correct?

The Witness: That is right, yes. [2392]

Mr. Clark: That is all.

Mr. Mouritsen: I believe your answer was that the \$50.00 which is represented by Board's Exhibit 31 was to pay for the cost of putting the tent up and taking it down, is that correct?

The Witness: Yes, that is the way the bill read.

Mr. Mouritsen: That is all.

Trial Examiner Lindsay: That is all.

Mr. Clark: No further questions.

(Witness excused.)

Mr. Mouritsen: Might we have a short recess, Mr. Examiner? It is pretty warm.

Trial Examiner Lindsay: Yes, it is very warm. A ten minute recess.

(At this point a short recess was taken, after which proceedings were resumed as follows:)

Trial Examiner Lindsay: Hearing called to order.

All right, Mr. Clark.

Mr. Clark: I will call Mr. Louis T. Robinson on the Boswell Company case, Mr. Examiner.

LOUIS T. ROBINSON

recalled to the stand by and on behalf of the Respondent, J. G. Boswell Company, having been previously duly sworn, was further examined and testified as follows: [2393]

Direct Examination

Q. (By Mr. Clark): Mr. Robinson, you have already been sworn and I believe you testified, or have testified already, that you are general manager of the San Joaquin County for the Respondent, J. G. Boswell Company?

A. San Joaquin Valley.

Q. San Joaquin Valley. That is what I meant. Have you occupied that position—withdraw that.

In the course of that position, Mr. Robinson, are you likewise general manager of the Company's plant here at Corcoran? A. Yes, sir.

Q. And has that been true continuously ever since July 1 of last year, that is, 1938?

A. That is correct.

(Testimony of Louis T. Robinson.)

Q. Now, will you please tell us whether there is any one else at the Corcoran plant of the J. G. Boswell Company who is authorized by the Company to speak for it with respect to any employment matters other than yourself?

Mr. Mouritsen: Objected to as vague and indefinite. What are "employment matters?"

Mr. Clark: Withdraw that. May I have the last question before this, Mr. Examiner?

Trial Examiner Lindsay: Yes.

(The record referred to was read by the reporter, as set [2394] forth above.)

Q. (By Mr. Clark): Now, who is the plant superintendent at the Corcoran plant?

A. Mr. G. L. Hammond.

Q. And is Mr. G. L. Hammond the same man who has been referred to throughout the testimony in this case as Gordon Hammond?

A. Yes, sir, the same man.

Q. How long has Mr. Gordon Hammond been plant superintendent here at Corcoran?

A. About fourteen years.

Q. And of course he has held that position continuously from July 1st of last year, is that right?

A. That is correct.

Q. Aside—withdraw that.

Is Mr. Gordon Hammond an authorized representative of the J. G. Boswell Company?

Mr. Mouritsen: I will object to that on the ground it is vague and indefinite.

(Testimony of Louis T. Robinson.)

Mr. Clark: I will withdraw that question.

Q. Is there anyone other than yourself and Mr. Hammond here in Corcoran who is authorized to speak for the J. G. Boswell Company with respect to any matter concerning its business?

A. There is no one else. I don't mean by that that we have unlimited authority, but there is certainly no one else besides [2395] us two.

Q. All right.

In other words, as I understand your answer, you don't mean to tell us that you and Mr. Hammond have unlimited authority to bind the Company?

A. No, sir.

Q. There is no one else here at the Corcoran plant other than yourself and Mr. Hammond who has any authority at all to bind the Company, is that right?

A. That is correct.

Q. All right.

Now, as between you and Mr. Gordon Hammond, will you please tell us what respective duties you perform?

A. Mr. Hammond is plant superintendent. He has charge of the manufacturing end of the plant. I have charge of securing raw materials for the plant, financing and the collections.

Q. I see.

Is it a fair statement to say that Mr. Hammond is the one as between you and him who is in charge of labor in the plant?

A. That is correct.

Q. And that likewise has been true continuously

(Testimony of Louis T. Robinson.)

ever since January 1 of last—July 1st of last year, has it not? A. That is correct.

Q. Is there any one at the Corcoran plant, Mr. Robinson, other than yourself and Mr. Gordon Hammond, who has the au- [2396] thority from the Boswell Company to employ or discharge any of the employees? A. No one else.

Mr. Mouritsen: May we have the basis for that statement, Mr. Clark, whether it is the witness' own knowledge, or just what the basis is?

Mr. Clark: Well, that is proper cross examination, but I would just as soon go into it now.

Q. Can you tell us the basis upon which you make that statement, Mr. Robinson?

A. That authority originally came from the head office. It had been in practice there for a period of years.

Q. May I have that back? I can't quite—

A. (Interrupting) That authority originally came from the head office, and has now been in practice for a period of years. [2397]

Q. I see.

In other words, no one else has the right to hire and fire employees? A. That is correct.

Q. Now, specifically—withdraw that.

Now I think you have already told us that commencing some time in the month of July 1938 you had heard, through gossip and rumor that Mr. Prior was attempting to organize a union among the employees in the plant, or at least he was try-

(Testimony of Louis T. Robinson.)

ing to get the employees in the plant to join a union.

Do you remember that testimony?

A. That is correct.

Q. Directing your attention to the date September 2nd, 1938, I will ask you whether or not on that day you had a conversation with Mr. Prior?

A. Well, I had a conversation around the first part of September. I couldn't be exact as to that date.

Q. All right.

Do you remember where that conversation was held?

A. It was held in Mr. Gordon Hammond's office.

Q. And do you remember who else if anyone were present aside from you and Mr. Prior?

A. Gordon Hammond and W. W. Boswell.

Q. Who is W. W. Boswell?

A. He has charge of the cattle operations for the company. [2398]

Q. Now, prior to the time of this conversation which you have just located for us, between you and these other gentlemen and Mr. Prior, had you ever had any contact or talk with Mr. Prior?

A. None at all.

Q. So that I am correct in stating, am I not, that this was your first personal contact with Mr. Prior or any of his ambitions so far as the union was concerned?

A. That is correct.

Q. All right.

Now, will you please tell us what if anything was

(Testimony of Louis T. Robinson.)

said by Mr. Prior on this occasion and what if anything was said by you and the other gentlemen present.

A. Well, Mr. Prior and Mr. Boswell and Mr. Hammond evidently had been talking before I arrived. I came in and they introduced Mr. Prior. Mr. Prior stated that it was his intention to try to organize an A.F.L. union at our plant; that his operations would be on a high plane and up and above board and was putting the management——

Mr. Mouritsen (Interrupting): What is that?

The Witness: Up and above board and was putting the management on notice of his intention.

Q. (By Mr. Clark): What if anything did you reply to that?

A. I told Mr. Prior the company had no objection to any of its men joining any union that they saw fit, but that we were [2399] faced with a serious unemployment situation; that on account of the flood and the Government crop control program we knew we wouldn't have over the 10,000 bale run and that I hoped in his efforts he wouldn't do anything that would aggravate that condition.

Q. Did he make any reply to that?

A. I don't remember any specifically but generally he agreed that he would cooperate with us.

Q. Was anything else said during that conversation that you remember?

A. Yes. It was rather a long conversation. During the conversation Mr. Gilmore came up. I

(Testimony of Louis T. Robinson.)

don't exactly recall how he came into the conversation.

Q. You mean his name came into it?

A. Yes, sir.

Q. You don't mean that Mr. Gilmore was there?

A. No. I mean that his name came in the conversation.

Q. Very well.

Tell us what if anything else was said by anyone present regarding Mr. Gilmore.

A. I told Mr. Prior that Mr. Gilmore was not even employed by us and if I was going to try to organize a union I wouldn't try to build it around Mr. Gilmore, I would go out in the plant and get some of the regular men.

Q. And how was it that Gilmore's name came into the conversation at all, Mr. Robinson, if you remember? [2400]

A. I don't recall. I have a recollection, rather, that I had heard that Mr. Prior was working with Mr. Gilmore. I might have brought it up myself.

Q. I see.

Did you know who Mr. Gilmore was?

A. Yes, sir.

Q. And who was he, please?

A. Oh, he had been employed there at the plant for a number of years.

Q. And so far as you knew at that time, or now know, when was the last time prior to September

(Testimony of Louis T. Robinson.)

2nd of last year that Mr. Gilmore had been employed with the J. G. Boswell Company?

A. I think about the spring of 1938.

Q. I see.

And as I understand it, he was not working at the time of this conversation?

A. That is correct.

Q. What was it again that you said to Mr. Prior concerning what you would do if you were trying to organize a union in the plant?

Mr. Mouritsen: Objected to as already asked and answered.

Mr. Clark: I would like it again, if I may have it, Mr. Examiner.

Mr. Mouritsen: I will withdraw the objection.

The Witness: If I were trying to organize a union, I [2401] wouldn't build it around Gilmore, I would go out and get some of the regular men in our employ.

Q. (By Mr. Clark): Well now, what did you mean by that?

A. Well, I just meant——

Mr. Mouritsen (Interrupting): Objected to as calling for a self-serving declaration.

Mr. Clark: Well, I want to know what Mr. Robinson's intention was in making a statement such as that. I think his intent is a proper subject of his testimony, Mr. Examiner.

Mr. Mouritsen: What opportunity do we have to test that?

(Testimony of Louis T. Robinson.)

Mr. Clark: You can cross examine him on it, and then there is the objective——

Trial Examiner Lindsay (Interrupting): Let us not argue so much about it.

Mr. Clark: Yes.

I think the Examiner said that you might answer.

Trial Examiner Lindsay: Just a moment. I started to say it when I was cut off.

He may answer.

The Witness: Well, the intent that I had in mind was if he was going to operate on a high plane, to go right out and see the men, talk it over.

Mr. Clark: I see.

Q. Now, what—withdraw that. [2402]

I think you said that you told Mr. Prior on that occasion that it looked as though you were going to have a short run this year, that being the fall of 1938? A. That is correct.

Q. Is that true? A. Yes.

Mr. Mouritsen: Objected to as already asked and answered.

Mr. Clark: I am simply directing his attention to part of the conversation——

Trial Examiner Lindsay (Interrupting): Let us not go over each thing so many times.

Mr. Clark: Very well. If I am let alone for a minute or two, we will make some progress.

Q. Do you know how many bales of cotton, just approximately, were ginned by the J. G. Boswell Company during the year 1937 and '38, that is, the preceding season? A. At Corcoran?

(Testimony of Louis T. Robinson.)

Q. At Corcoran, yes.

A. Between 47 and 48 thousand.

Q. I see.

And how many bales were actually ultimately ginned at the Corcoran plant during the season of 1938 to 1939?

A. Between 9 and 10 thousand.

Q. Very well. [2403]

Can you tell us, Mr. Robinson, what the approximate difference, if any, in the number of men employed during any given time at the Corcoran plant was between the 37-38 season and the 38-39 season?

Mr. Mouritsen: I object. May I have that question?

Trial Examiner Lindsay: Yes.

(The record referred to was read by the reporter, as set forth above.)

Mr. Clark: I will withdraw that question.

Q. Normally what month during the year is the peak so far as employment is concerned at the Corcoran plant?

A. It depends somewhat on the stage of the crop, whether it is an early or a late crop, and somewhat on the weather in the fall, but I would say ordinarily the peak is reached the last of October to the first part of November.

Q. All right.

Now, can you tell us how the number of men employed at the Corcoran plant at the peak of the season during the 37-38 season compared with the

(Testimony of Louis T. Robinson.)

number of men employed at the Corcoran plant during the peak of the 38-39 season?

Mr. Mouritsen: I object to that on the ground that better evidence is available. Evidently records are kept of this matter that are in this man's possession and subject to his control and we are trying to substitute this man's recollection. [2404]

Mr. Clark: I want to point out this is a statement made to him by Mr. Prior with reference to the company facing an apparent unemployment situation.

What is his own knowledge of it, if I may have it?

Trial Examiner Lindsay: The record is the best evidence, but he may answer.

The Witness: May I have the question.

(The question referred to was read by the reporter, as set forth above.)

The Witness: I would say over twice as many during the 37-38 season than during the 38-39 season.

Mr. Clark: Very well. All right.

Q. Now, did you have any further—is that all, substantially all, that took place at the meeting in early September between you and Mr. Prior and Mr. Boswell and Mr. Gordon Hammond?

A. No, we had a conversation regarding unions in general.

Q. All right.

Let's have it, please, in substance.

(Testimony of Louis T. Robinson.)

A. Well, I would have to rather reconstruct it in substance all right, but the conversation turned to unions and I told Mr. Prior that I wouldn't be in a position to commit the company in any way regarding unions, but personally I thought they had a big opportunity for good, that they were powerful politically but I thought they were muffing their opportunity [2405] by poor leadership.

We discussed those general lines for quite awhile; that is, about as much of it as I recall at this time.

Q. Was there anything else said that you remember?

A. I don't remember anything else.

Q. All right.

Did you ever have any further conversation with Mr. Prior—withdraw that.

Did you have any further conversation with Mr. Prior during the fall of 1938? A. Yes, sir.

Q. And when was the next time you talked with him, please?

A. The next conversation I recall with Mr. Prior was a telephone conversation the night of November 18th.

Q. All right.

So that between the time in early September you have told us about and the evening of November 18, 1938, you had no further personal contact with Mr. Prior, isn't that right?

A. To the best of my recollection.

Q. All right.

(Testimony of Louis T. Robinson.)

I think you have given us most of your recollection of the events of the morning of November 18th already, and I think you have told us, Mr. Robinson, that you received a telephone call from someone of the union men along about noon time.

Do you remember that? [2406]

A. Yes, a little prior to noon time.

Q. All right.

Have you already related the subject matter of that telephone conversation for us?

A. That is my recollection that I have.

Q. Now, later that day did you receive any further telephone calls from any representatives of the union other than Mr. Prior?

A. No, I didn't receive any further calls.

Q. I believe that you state in your letter of November 18th, which is in evidence in this case, that you had been informed prior to writing that letter that Mr. Farr, I believe, had called back. Do you remember that?

A. When I came back from lunch the telephone operator told me Mr. Farr had called when I was at lunch and he would call again, but he did not call any more. [2407]

Q. That is what I am after.

Did Mr. Farr ever call you back at the plant on that day? A. Not that I recall.

Q. Or any other place? A. No.

Q. Your answer is what?

A. My answer is No.

(Testimony of Louis T. Robinson.)

Q. Now, did Mr. Prior talk to you that evening?

A. Mr. Prior talked to me that evening at my house. There was a telephone conversation. I understood he was calling from Bakersfield.

Q. All right.

Will you please tell us what Mr. Prior said to you, and what you said to him during that telephone conversation respecting the events of that morning, namely, November 18th?

A. Mr. Prior said he had heard about the events of that morning, and he wanted to come up and help straighten it out.

Q. And what, if anything, did you reply to that?

A. I told Mr. Prior that I felt we were fully capable of straightening it out ourselves.

Q. Anything else, Mr. Robinson?

A. Mr. Prior said that it would have to be straightened out, and that whatever steps necessary to straighten it out would be taken.

And I told him that if that was a threat, he was wasting [2408] his breath, and I hung up.

Q. I see.

Now, do I understand that prior to the occurrences of the morning of November 18th, that is, the men swarming into the office where you were in the administration building, actually happening, you had no notice whatsoever that they were about to happen?

A. That is correct.

Q. All right.

Did you then have a conversation with Mr. Prior

(Testimony of Louis T. Robinson.)

and certain other gentlemen on the morning of the following day, that is, Saturday, November 19th?

A. Yes, sir.

Q. And where was that, please?

A. That conversation was also in Gordon Hammond's office.

Q. And who, if anyone else, was present other than you and Mr. Prior?

A. Gordon Hammond, R. K. Martin and Lonnie Spear.

Q. And yourself and Mr. Hammond, is that right?

A. Myself and Mr. Prior.

Q. And Mr. Prior.

Was Mr. Hammond present?

A. Yes, sir.

Q. Now, will you please tell us what was said by Mr. Prior on that occasion in substance, as nearly as you recollect it, [2409] and what was said by you or any of the other persons present?

A. Mr. Prior said he had come up to see about putting these men back to work. I told him that the men could go back to work at any time.

He said that they would have to have a special protection to go back to work.

I told him I didn't think they needed any special protection. He said that they did need the protection, and I told him that we would not provide any special protection, but that they could go back to work.

I told the men present that they should go and

(Testimony of Louis T. Robinson.)

talk to the boys themselves. I thought they would find that everything was all right.

Q. By the men, whom do you refer to?

A. I refer to Spear and Martin, that Spear and Martin and the rest of the boys that had left work should go out and talk to the men themselves, and satisfy themselves that they didn't need any special protection.

I don't know who replied to that, but anyway, they didn't care to do that.

I told Mr. Hammond that I would like for him to feel out the sentiment of these men and see if he felt they needed special protection.

Q. That is, Gordon Hammond?

A. Yes. [2410]

Mr. Prior then asked me if I was talking for the head office. I told him the head office had come to no definite decision that I knew of, except that the men could go back to work at any time, and that if they didn't go back to work, they would get the pay anyway until the head office came to a determination of the whole matter.

He asked me how long before that determination would be reached, and I told him I didn't know.

He asked me for the earliest possible answer on that, and I told him I couldn't hurry that, that that would have to be decided as early as it could.

Q. That would what?

A. That would have to be decided as early as it could, but I could not give him any definite time when it would be decided.

(Testimony of Louis T. Robinson.)

Q. Do you remember, Mr. Robinson, what time of the morning of Saturday, November 19th, approximately, this conversation took place?

A. Oh, I would think around 9:00 o'clock.

Q. Do you remember anything said by Mr. Prior with respect to a deadline, or a certain time within which he demanded an answer from you or the Company?

Mr. Mouritsen: Objected to as to the form of the question.

Mr. Clark: Well, I will withdraw the question.

Q. Do you remember anything at all said by Mr. Prior with [2411] respect to setting a limit prior to which he wanted an answer?

A. No, I don't recall any limit. [2412]

Q. All right.

At that meeting did you state to the men present, that is, the men who had been employed by the company up to that time, including Mr. Spear, that they would be carried on the payroll?

A. Yes, sir.

Q. What was that statement again, if I may have it, just as fully as you remember it?

A. To the best of my recollection, I stated that they would be carried on the payroll until the company came to a determination as to how to handle that situation.

Q. I see.

And did you at that time and in the presence of those men, Mr. Robinson, tell them that they could come to work at any time?

A. Yes, sir.

(Testimony of Louis T. Robinson.)

Q. Now, is that all that you remember of that conversation? A. That is all I recall.

Q. Did you have a further conversation with Mr. Prior on any subsequent occasion?

A. Yes, sir, I did.

Q. And can you please tell us when that was as nearly as you can recollect it?

A. The next conversation I recollect having with Mr. Prior was in my office around ten days later. [2413]

Q. I see. And did you hear Mr. Prior testify during this proceeding some weeks ago?

A. I didn't hear all of his testimony, but I heard part of it.

Q. Well, did you hear him testify with respect to a conversation had with you on November 28, 1938? Did you hear that date mentioned?

A. Yes, sir.

Q. All right.

Now, let me direct your attention, Mr. Robinson, to that conversation, that is, the conversation which has been testified to in this record as having occurred on or about November 28th of 1938. Do you recall any such conversation?

A. Yes, sir.

Q. And where did that take place, please?

A. It took place in my office.

Q. And who, if anyone else, was present?

A. The only one I remember is Mr. Prior and myself.

(Testimony of Louis T. Robinson.)

Q. I see.

Now, leaving that just for the moment, am I correct in stating that between that time and the conversation of November 19th, that is, Saturday, November 19th, Mr. Larson of the National Labor Relations Board had called upon you?

A. That is correct.

Q. And it was during that week, wasn't it, Mr. Robinson, [2414] that is, the week of November 21st, that the events took place between you and Mr. Larson and Mr. McWilliams——

Mr. Mouritsen (Interrupting): I object.

Mr. Clark: It is already in. I want to cover it to get the chronological order.

May I have it as far as I have gone.

(The question referred to was read by the reporter, as set forth above.)

Q. (By Mr. Clark, continuing): To which you testified to on your cross examination earlier in this case? A. Yes, sir.

Q. That is regarding the notice which was posted? A. That is correct.

Q. Was the notice, a copy of which is in evidence in this case, actually posted in the plant?

Mr. Mouritsen: Objected to.

Mr. Clark: It has been gone into, I think.

Mr. Mouritsen: Very well.

Mr. Clark: All right.

Q. Now, coming back, then, to the conversation which has been placed as having taken place on

(Testimony of Louis T. Robinson.)

November 28, 1938, between you and Mr. Prior, will you tell us where that was?

A. That took place in my office.

Q. And is that likewise in the office or administration building at the plant? [2415]

A. Yes, it is the northwest office of that building.

Q. By the way, Mr. Robinson, is this office building near one of the main gates, or entrances, into the Boswell plant here at Corcoran?

A. Oh, approximately across the road, perhaps a little south of it.

Q. I see.

From one of the main entrances, is that right?

A. From one of the main entrances.

Q. It is conveniently located to one of the main entrances, is that right?

A. That is right.

Q. I think you said no one else was present during this conversation.

A. I don't recall anyone else. If anyone else was present, they didn't take part in the conversation, and I don't believe they were right near.

Q. All right.

Will you please tell us what, if anything, was said by Mr. Prior on this occasion and what, if anything, you said?

A. Mr. Prior told me that he had come down to see about getting the men put back to work. I asked him just exactly what men he referred to.

(Testimony of Louis T. Robinson.)

So he says, "Well, I will name them."

I took out a pencil and paper to write down the names [2416] as he named them.

The first man he named was Lonnie Spear. I wrote his name down and told him that we might find some work for Lonnie, that his gin would probably run a few more days.

I don't know if Martin was the next man he named, but if he named anybody between Spear and Martin, I don't remember it.

Then he named R. K. Martin. I told him that Mr. Martin's gin had closed down and we didn't have any work for him at that time.

He said, "Well, if you don't have any work for Martin, there is no use to talk any further."

Q. What happened, if anything?

A. He walked out. [2417]

Q. I see.

Now, did you have any further conversation at all with Mr. Prior relative to re-instating these employees, that is, the members of the Union, until the 17th of January of 1939? A. None at all.

Q. All right.

And was it—withdraw that.

I will show you what purports to be a carbon copy of a letter dated November 28th, 1938, addressed to Mr. Andrade at Corcoran, California, by J. G. Boswell Company, by you, Mr. Robinson, Louis T. Robinson, to which is attached a return receipt of the postal service indicating that this

(Testimony of Louis T. Robinson.)

original was delivered to Mr. Andrade on November 29th, 1938.

Did you send out the original of that to Mr. Andrade? A. Yes, sir.

Q. Was that after this conversation with Mr. Prior? A. I couldn't recall——

Mr. Mouritsen (Interrupting): May we have the conversation identified?

Mr. Clark: On the 28th.

Mr. Mouritsen: If that is fixed, I object. It is self-evident.

Mr. Clark: I won't ask the question.

Q. Was that sent out by you on or about November 28th?

A. (Examining document) Yes, sir. [2418]

Mr. Clark: We will offer it in evidence as the Respondent Boswell's Exhibit next in order.

Mr. Mouritsen: There has been no ruling on this, as yet?

Trial Examiner Lindsay: No. We are trying to find out if 14 is the right number.

Fourteen is the right number.

Mr. Clark: I will offer it as Respondent Boswell's 14 in evidence.

Mr. Mouritsen: I will object to it on the ground it is a self-serving document. I will not object on the ground it is a copy.

Mr. Clark: Mr. Examiner, I am not concerned with any probative value to be attached to the text of the letter. I simply want it in to establish the

(Testimony of Louis T. Robinson.)

fact of termination at this time—that is all—of the Andrade employment. I don't care about the reasons assigned.

Trial Examiner Lindsay: Well, I am going to reserve ruling.

Mr. Clark: I would like to limit my offer, Mr. Examiner, simply to the purpose of showing that on November 28th the employment of Mr. Andrade was terminated. I don't care anything at all about the reasons assigned for it.

Trial Examiner Lindsay: All right; then it is received.

(Thereupon, the document above referred to was received in evidence and marked as Respondent Boswell Company's Exhibit No. 14.) [2419]

BOSWELL'S EXHIBIT No. 14

November 28, 1938.

Registered Mail Return Receipt Requested

Mr. George Andrade
Corcoran, California

Dear Sir:

We have now accumulated the full supply of planting cotton seed to be saved by us this season and in accordance with our usual operating practice, closed down this job Saturday, November 26, at 5 P. M. The closing down of this job forces us to terminate your employment as of that date and you may secure your closing pay check by calling

(Testimony of Louis T. Robinson.)

for same at the usual place in our Corcoran office.

Yours very truly.

J. G. BOSWELL COMPANY

IC

LOUIS T. ROBINSON

RECEIPT FOR REGISTERED ARTICLE

No. 534

(Stamped) Corcoran, Calif., Nov. 28, 1938. Registered.

15c fee paid. 1 class postage paid. Date 11-28, 1938.

Declared value, \$. Surcharge paid, \$.

From (Sender) J. G. Boswell Co.

(Street and Number) City (Post office and State)

Addressed to (Addressee) Mr. Geo. Andrade.

R F D

Corcoran, Calif.,

(Street and number)

(Post office and State)

Accepting employee will place initials in space
below, indicating restricted delivery

Return receipt fee 3, Delivery restricted to addressee
in person or order Fee paid.

Special delivery fee Postmaster, per B

RETURN RECEIPT

(Stamped) Corcoran, Calif., Nov 29 1:30 P. M.
1938.

Received from the Postmaster the Registered or
Insured Article, the original number of which ap-
pears on the face of this Card.

GEO. ANDRADE.

(Signature or name of addressee)

.....

(Signature of addressee's agent)

(Testimony of Louis T. Robinson.)

Date of delivery, 11-29, 1938.

(Over)

Penalty for Private Use to Avoid Payment of
Postage, \$300.

Postmark of Delivering Office
Post Office Department
Official Business

Registered Article

No. 534

Insured Parcel

Return to J. G. Boswell Co.

(Name of sender)

Street and Number, or Post Office Box.

Post Office at Corcoran, Calif.

[Endorsed]: Filed 6/12/39.

Q. (By Mr. Clark) Now, Mr. Robinson, I likewise show you what purports to be a copy of a letter bearing the same date, November 28th, addressed to Mr. L. E. Ely, Corcoran, California, by J. G. Boswell Company, by yourself, Louis T. Robinson, to which is attached a return receipt of the postal authorities.

Mr. Mouritsen: Let's stipulate regarding those, Mr. Clark.

I will stipulate if you will offer them for that same limited purpose, they may go in.

Trial Examiner Lindsay: Have them marked for identification.

(Testimony of Louis T. Robinson.)

Mr. Clark: Very well.

I will offer them without marking them, if I may, in evidence, and assume that stipulation.

Trial Examiner Lindsay: But the reporter will be instructed to mark each one of those as Boswell's Exhibits next in order, in line. That is, 14, 15, 16, 17, 18 and until you have completed all of these.

Mr. Mouritsen: And perhaps if you will read the names, Mr. Clark.

Mr. Clark: All right.

We will then, Mr. Examiner, offer in evidence as Respondent Boswell's Exhibits 15, 16, 17, 18, 19 and 20, the following letters to which return receipts of the postal authorities, United States Postal authorities, are attached, namely: A [2420] letter addressed to Mr. L. E. Ely, dated November 28th, 1938, by J. G. Boswell Company;

A letter dated November 28th, 1938, addressed to Mr. E. C. Powell, by J. G. Boswell Company;

A letter dated November 28th, 1938, addressed to Mr. R. K. Martin, by J. G. Boswell Company;

A letter dated December 6th, 1938, addressed to Mr. H. N. Wingo, by J. G. Boswell Company;

And a letter dated December 6th, 1938, addressed to Mr. L. A. Spear, by J. G. Boswell Company;

And a letter dated December 6th, 1938, addressed to Mr. O. L. Farr by the J. G. Boswell Company.

Trial Examiner Lindsay: Boswell's Exhibits Nos. 15 to 20, both inclusive, are received in evidence in accordance with the stipulation.

(Thereupon the documents above referred to were received in evidence and marked as Re-

(Testimony of Louis T. Robinson.)

spondent Boswell Company's Exhibits Nos. 15,
16, 17, 18, 19 and 20, respectively.)

BOSWELL'S EXHIBIT No. 15

November 28, 1938.

Registered Mail Return Receipt Requested
Mr. L. E. Ely
Corcoran, California

Dear Sir:

Because of the reduced receipts at our plant of seed cotton for ginning, and in accordance with our usual operating practice, we closed down gin #4 on which you were employed, Saturday, November 26, at 5 P.M. and your employment by this Company terminated at that time.

Your closing pay check has been issued and will be delivered to you at the usual place in our Corcoran office.

Yours very truly,

J. G. BOSWELL COMPANY

IC

LOUIS T. ROBINSON.

RECEIPT FOR REGISTERED ARTICLE

No. 536

(Stamped): Corcoran, Calif., Nov 28 1938. Registered.

15 fee paid. 1 class postage paid. (Date) 11-28, 1938.

Declared value \$. Surcharge paid \$.

From (Sender) J. G. Boswell Co.

(Street and number) City (Post office and State)

Addressed to (Addressee) Mr. L. E. Ely

(Street and number) City (Post office and State)

(Testimony of Louis T. Robinson.)

Accepting employee will place initials in space
below, indicating restricted delivery

Return receipt fee 3. Delivery restricted to addressee
in person..... or order..... Fee paid.....
Special delivery fee..... Postmaster, per B

RETURN RECEIPT

Received from the Postmaster the Registered or
Insured Article, the original number of which ap-
pears on the face of this Card.

L. E. Ely

(Signature or name of addressee)

.....

(Signature of addressee's agent)

Date of delivery Nov 28 1938.

(Over)

(Stamped) Corcoran, Calif., Nov. 28 [illegible]
P. M. 1938.

Penalty for Private Use to Avoid Payment of
Postage, \$300.

Postmark of Delivering Office

Post Office Department

Official Business

Registered Article

No. 536

Insured Parcel

No.....

Return to (Name of Sender) J. G. Boswell Co.

Street and Number or Post Office Box,-----

Post Office at Corcoran, Calif.

State.....

[Endorsed]: Filed 6/12/39.

(Testimony of Louis T. Robinson.)

BOSWELL'S EXHIBIT No. 16

November 28, 1938.

Registered Mail Return Receipt Requested
Mr. E. C. Powell
Corcoran, Calif.

Dear Sir:

The last job you had with this Company was in the capacity as helper in the Warehouse. As you know, this was Fred Armenta's regular job but at that time he was not working because of injury. Fred Armenta has now recovered and has gone back on his regular job and we will not need your further services at this time.

You may secure your closing pay check by calling for same at the usual place in our Corcoran office.

Yours very truly,

J. G. BOSWELL COMPANY

IC

LOUIS T. ROBINSON.

RECEIPT FOR REGISTERED ARTICLE

No. 535

(Stamped): Corcoran, Calif., Nov 28 1938. Registered.

15 fee paid. 1 class postage paid. (Date) 11-28, 1938.

Declared value, \$. Surcharge paid, \$.

From (Sender) J. G. Boswell Co.

(Street and number) City (Post office and State)

Addressed to (Addressee) E. C. Powell

(Street and number) City (Post office and State)

Accepting employee will place initials in space below, indicating restricted delivery

(Testimony of Louis T. Robinson.)

Return receipt fee 3. Delivery restricted to addressee
in person..... or order..... Fee paid.....
Special delivery fee..... Postmaster, per B

RETURN RECEIPT

Received from the Postmaster the Registered or
Insured Article, the original number of which ap-
pears on the face of this Card.

E. C. Powell

(Signature or name of addressee)

Carrie A. Powell

(Signature of addressee's agent)

Date of delivery Nov 28 1938.

(Over)

(Stamped) Corcoran, Calif., Nov. 28, 1:30 P. M.
1938.

Penalty for Private Use to Avoid Payment of
Postage, \$300.

Postmark of Delivering Office

Post Office Department

Official Business

Registered Article

No. 535

Insured Parcel

No.....

Return to (Name of Sender) J. G. Boswell Co.

Street and Number or Post Office Box, -----

Post Office at Corcoran, Calif.

State.....

[Endorsed]: Filed 6/12/39.

(Testimony of Louis T. Robinson.)

BOSWELL'S EXHIBIT No. 17

November 28, 1938.

Registered Mail Return Receipt Requested
Mr. R. K. Martin
Corcoran, Calif.

Dear Sir:

Because of the reduced receipts at our plant of seed cotton for ginning, and in accordance with our usual operating practice, we closed down gin #4 on which you were employed, Saturday, November 26, at 5 P.M. and your employment by this Company terminated at that time.

Your closing pay check has been issued and will be delivered to you at the usual place in our Corcoran office.

Yours very truly,

J. G. BOSWELL COMPANY

IC

LOUIS T. ROBINSON.

RECEIPT FOR REGISTERED ARTICLE

No. 537

(Stamped): Corcoran, Calif., Nov 28 1938. Registered.

15 fee paid. 1 class postage paid. (Date) 11-28, 1938.

Declared value, \$. Surcharge paid, \$.

From (Sender) J. G. Boswell Co.

(Street and number) City (Post office and State)

Addressed to (Addressee) Mr. R. K. Martin

(Street and number) City (Post office and State)

(Testimony of Louis T. Robinson.)

Accepting employee will place initials in space below, indicating restricted delivery

Return receipt 3. Delivery restricted to addressee in person..... or order..... Fee paid.....
Special delivery fee..... Postmaster, per B

RETURN RECEIPT

Received from the Postmaster the Registered or Insured Article, the original number of which appears on the face of this Card.

R. K. Martin

(Signature or name of addressee)

.....

(Signature of addressee's agent)

Date of delivery Nov 28 1938.

(Over)

(Stamped) Corcoran, Calif., Nov. 28 1:30 P. M. 1938.

Penalty for Private Use to Avoid Payment of Postage, \$300.

Postmark of Delivering Office

Post Office Department

Official Business

Registered Article

No. 537

Insured Parcel

No.....

Return to (Name of Sender) J. G. Boswell Co.

Street and Number or Post Office Box.....

Post Office at Corcoran, Calif.

State.....

[Endorsed]: Filed 6/12/39.

(Testimony of Louis T. Robinson.)

BOSWELL'S EXHIBIT No. 18

December 6, 1938.

Registered Mail Return Receipt Requested
Mr. H. N. Wingo
Corcoran, California

Dear Sir:

Because of the reduced receipts at our plant of seed cotton for ginning, and in accordance with our usual operating practice, we closed down gin #2 on which you were employed, Saturday, December 3, at 5 P.M. and your employment by this Company terminated at that time.

Your closing pay check has been issued and will be delivered to you at the usual place in our Corcoran office.

Yours very truly,

J. G. BOSWELL COMPANY

IC

LOUIS T. ROBINSON.

RECEIPT FOR REGISTERED ARTICLE

No. 574

(Stamped): Corcoran, Calif., Dec 6 1938. Registered.

15 fee paid. 1 class postage paid. (Date) 12-6, 1938.

Declared value, \$NV Surcharge paid, \$.....

From (Sender) J. G. Boswell Co.

(Street and number) City (Post office and State)

Addressed to (Addressee) H. N. Wingo.

(Street and number) City (Post office and State)

(Testimony of Louis T. Robinson.)

Accepting employee will place initials in space below, indicating restricted delivery

Return receipt fee... Delivery restricted to addressee in person..... or order..... Fee paid 3

Special delivery fee..... Postmaster, per C

RETURN RECEIPT

Received from the Postmaster the Registered or Insured Article, the original number of which appears on the face of this Card.

H. N. Wingo

(Signature or name of addressee)

.....

(Signature of addressee's agent)

Date of delivery Dec 6 1938.

(Over)

(Stamped) Corcoran, Calif., Dec 6 5 PM 1938.

Penalty for Private Use to Avoid Payment of Postage, \$300.

Postmark of Delivering Office

Post Office Department

Official Business

Registered Article

No. 574

Insured Parcel

No.....

Return to (Name of Sender) J. G. Boswell Co.

Street and Number or Post Office Box,.....

Post Office at Corcoran, Calif.

State.....

[Endorsed]: Filed 6/12/39.

(Testimony of Louis T. Robinson.)

BOSWELL'S EXHIBIT No. 19

December 6, 1938.

Registered Mail Return Receipt Requested
Mr. L. A. Spear
Corcoran, California

Dear Sir:

Because of the reduced receipts at our plant of seed cotton for ginning, and in accordance with our usual operating practice, we closed down gin #1 on which you were employed, Monday, December 5, at 5 P.M. and your employment by this Company terminated at that time.

Your closing pay check has been issued and will be delivered to you at the usual place in our Corcoran office.

Yours very truly,

J. G. BOSWELL COMPANY

IC

LOUIS T. ROBINSON.

RECEIPT FOR REGISTERED ARTICLE

No. 575

(Stamped): Corcoran, Calif., Dec 6 1938. (Registered.)

15 fee paid. 1 class postage paid. (Date) 12-6, 1938.

Declared value, NV Surcharge paid, \$.....

From (Sender) J. G. Boswell Co.

(Street and number) City (Post office and State)

Addressed to (Addressee) L. A. Spear

(Street and number) City (Post office and State)

(Testimony of Louis T. Robinson.)

Accepting employee will place initials in space below, indicating restricted delivery

Return receipt fee. . . Delivery restricted to addressee in person. or order. Fee paid 3

Special delivery fee. Postmaster, per L

RETURN RECEIPT

Received from the Postmaster the Registered or Insured Article, the original number of which appears on the face of this Card.

L. A. Spear

(Signature or name of addressee)

Floyd Spear

(Signature of addressee's agent)

Date of delivery Dec 6 1938.

(Over)

(Stamped) Corcoran, Calif., Dec 6 6 PM, 1938.

Penalty for Private Use to Avoid Payment of Postage, \$300.

Postmark of Delivering Office

Post Office Department

Official Business

Registered Article

No. 575

Insured Parcel

No.

Return to (Name of Sender) J. G. Boswell Co.

Street and Number or Post Office Box.

Post Office at Corcoran, Calif.

State.

[Endorsed]: Filed 6/12/39.

(Testimony of Louis T. Robinson.)

BOSWELL'S EXHIBIT No. 20

December 6, 1938.

Registered Mail Return Receipt Requested
Mr. O. L. Farr
Corcoran, Calif.

Dear Sir:

Because of the reduced receipts at our plant of seed cotton for ginning, and in accordance with our usual operating practice, we closed down gin #2 on which you were employed, Saturday, December 3, at 5 P.M. and your employment by this Company terminated at that time.

Your closing pay check has been issued and will be delivered to you at the usual place in our Corcoran office.

Yours very truly,

J. G. BOSWELL COMPANY

IC

LOUIS T. ROBINSON.

RECEIPT FOR REGISTERED ARTICLE

No. 576

(Stamped): Corcoran, Calif., Dec 6 1938. Registered.

15 fee paid. 1 class postage paid. (Date) 12-6, 1938.

Declared value, NV Surcharge paid, \$.....

From (Sender) J. G. Boswell Co.

(Street and number) City (Post office and State)

Addressed to (Addressee) O. L. Farr

(Street and number) City (Post office and State)

(Testimony of Louis T. Robinson.)

Accepting employee will place initials in space below, indicating restricted delivery

Return receipt fee. . Delivery restricted to addressee in person. or order. Fee paid 3

Special delivery fee. Postmaster, per L

RETURN RECEIPT

Received from the Postmaster the Registered or Insured Article, the original number of which appears on the face of this Card.

O. L. Farr

(Signature or name of addressee)

.....

(Signature of addressee's agent)

Date of delivery Dec 12 1938.

(Over)

(Put in box 457. Lost and found on floor in lobby.)

Penalty for Private Use to Avoid Payment of Postage, \$300.

Postmark of Delivering Office

Post Office Department

Official Business

Registered Article

No. 576

Insured Parcel

No.

Return to (Name of Sender) J. G. Boswell Co.

Street and Number or Post Office Box,

Post Office at Corcoran, Calif.

State.

[Endorsed]: Filed 6/12/39.

(Testimony of Louis T. Robinson.)

Q. (By Mr. Clark) Now, with respect to these men whose names are referred to in the letters just admitted, Mr. Robinson, were they paid out for the respective jobs they had been working on upon November 18th, 1938?

Mr. Mouritsen: Objected to as calling for hearsay evidence when better evidence is available.

Mr. Clark: Well, we are going to furnish photostatic copies [2421] of that. This is preliminary. I want him to answer. It has to do with his action on that day. That is the only reason I am referring to it now.

Mr. Mouritsen: The only part of the question I am objecting to is as to these particular gentlemen——

Mr. Clark (Interrupting): I will withdraw it and see if I can get at it another way.

Q. Mr. Robinson, after your conversation with Mr. Prior on or about November 28th, 1938, and the mailing of these letters which have been admitted in evidence, were any of the men named in the letters ever re-employed by the J. G. Boswell Company? A. I don't think so.

Q. All right.

Now, will you please tell us whether or not at any time since November 18th of last year, there had been positions available at the Boswell plant here in Corcoran for all of the men named in those letters?

Mr. Mouritsen: Objected to as calling for a self-

(Testimony of Louis T. Robinson.)

serving declaration and it is incompetent, irrelevant and immaterial.

Mr. Clark: I will submit that.

Mr. Mouritsen: It is secondary evidence.

Mr. Clark: It is the very crux of the thing.

Trial Examiner Lindsay: He may answer.

The Witness: Not unless we laid off some men that were on jobs at that time. [2422]

Q. (By Mr. Clark) And by referring to men who were on jobs at that time, do you refer to men who were working on November 18th?

A. That is correct.

Q. Very well.

Now, did you have a subsequent conversation with Mr. Prior on or about January 17th of this year?

A. Yes, sir.

Q. And where did that occur?

A. That took place in my office.

Q. At the plant? A. At the plant.

Q. And when was it, as nearly as you can remember?

A. As nearly as I can remember, it was in the afternoon.

Q. Of January 17th? A. Yes, sir.

Q. And who was present, please, as nearly as you can recollect?

A. W. W. Boswell, Bill Robinson, Kelly V. Hammond, Maurice Howard, Lonnie Spear, R. K. Martin, O. L. Farr, George Andrade, Walter Winslow, and perhaps one or two more. That is all I remember.

(Testimony of Louis T. Robinson.)

Q. All right.

Who was Mr. Maurice Howard?

Mr. Mouritsen: We will stipulate he is a Field Examiner working out of the Los Angeles office of the 21st Region of the [2423] National Labor Relations Board, and was at that time.

Mr. Clark: Very well.

Q. Now, what was the occasion for this meeting? That is, how did it happen to be called? If you know?

A. Mr. Howard was carrying on an investigation in our plant and discussing the situation with me. He stated that after I had told these Union men to go back to work, that they were bodily ejected from the job.

Q. On what day, please?

A. On November 18th.

I denied that this was true, and he said he would prove it to me, and insisted that I remain in my office until he could go get the men he would prove it by.

He left the office and came back with the men I have named, other than Boswell, Robinson and Hammond. [2424]

Q. And then did a further meeting take place?

A. We had a meeting in my office.

Q. All right.

Now, please tell us what happened, if anything?

A. If I didn't name Mr. Prior, he was present at that meeting, too. I don't believe I named him.

(Testimony of Louis T. Robinson.)

Mr. Howard questioned the men as to why they left the plant on November 18th. The men replied that they left the plant because they had gotten together and talked it over and decided that was the best thing to do.

I then asked the men, particularly Lonnie Spear, if any one had hit them or cursed them or ordered them off the property and he said no. The other men agreed that that had not happened.

I then told Mr. Howard that he had not proved they had been bodily ejected from the property.

He then asked the men if they were afraid something might happen and some of them said they were afraid something might happen and he said the men left the property because they feared violence and that was the same thing as being bodily ejected from the property.

The conversation then went to the incident where they had the meeting in the morning and he questioned Lonnie Spear about that and Lonnie Spear said that one man took a hold of him on either arm and one man pushed him from the back and they [2425] pushed him across the property into the office. Mr. Howard said that if that had been him and they had done that with him, he would have shot all three men and that Lonnie Spear would have been fully justified in shooting all three of these men.

I told Mr. Howard that I didn't think much of that opinion.

(Testimony of Louis T. Robinson.)

The only other part of the conversation, I believe I recall, is the conversation that Walter Winslow testified to.

Q. Now, all right. What if anything was said by Walter Winslow or to Walter Winslow in the presence of all these people?

A. Mr. Howard was discussing with me the authority of Tom Hammond and Walter Winslow said that he would carry out all orders of Tom Hammond.

Q. Let us see if we can't reconstruct that just as nearly as we can, Mr. Robinson, with what you told Mr. Prior and what Mr.—Mr. Howard and what Mr. Howard said and what Walter Winslow said and what you said to Walter Winslow, giving us the parties.

A. Mr. Howard stated Tom Hammond was a supervisory employee. I stated that he was not.

He then questioned Walter Winslow about taking orders from Tom Hammond. Walter Winslow said he would take any order that Tom Hammond gave him. [2426]

I asked Winslow if he would take an order from Tom Hammond even if he knew it was wrong. He said, yes, that he would carry out the order even if he knew it was wrong.

I said I didn't think much of an employee that would carry out an order if he knew that was wrong.

Q. All right——

(Testimony of Louis T. Robinson.)

Mr. Mouritsen (Interrupting): Let the witness finish.

The Witness: That is all I remember of that conversation.

Mr. Clark: Very well. All right.

Q. Now, was that conversation then between you and Walter Winslow in connection with the discussion concerning the authority of Tom Hammond?

A. It was an outgrowth of a discussion between Mr. Howard and myself concerning the authority of Tom Hammond.

Q. Very well.

And do I understand that you denied to Mr. Howard that Tom Hammond had any authority?

A. I denied that he had any authority over the employees.

Q. All right. That is what I mean.

As a matter of fact, earlier during the week immediately following November 18th you had discussed this definition of supervisory employees with Mr. Larson of the Board, hadn't you?

A. That is correct. [2427]

Q. And am I correct in stating, Mr. Robinson, that that discussion with Mr. Larson of the National Labor Relations Board had resulted, during the week commencing November 21st, 1938, in the amendment or change in respondent Boswell's Exhibit 11, which is Mr. Larson's draft of the notice to employees?

(Testimony of Louis T. Robinson.)

Mr. Mouritsen: I will object to this as already asked and answered. Counsel went into it fully with him.

Mr. Clark: It is only one question, Mr. Examiner.

Trial Examiner Lindsay: You may have it, but let us not go over so many things so many times.

Q. (By Mr. Clark) Will you answer?

A. Yes, sir.

We asked Mr. Larson to change the word "supervisory employees" to "proper representatives."

Q. And he did? A. Yes.

Q. Now, is that all that you can tell us at this time of the conversation at which Mr. Maurice Howard was present, together with all of these other people you have named on January 17th of this year?

A. That is all I recall while they were present.

Q. All right.

Now, Mr. Robinson, did you have any subsequent conversation with Mr. Maurice Howard? [2428]

A. Yes, sir.

Q. Concerning that same subject matter? Will you please answer the question yes or no?

A. What subject matter do you refer to?

Q. Well, I will withdraw the question.

Will you please state whether you had any further conversation with Mr. Maurice Howard of the National Labor Relations Board, the investigator for it, after January 17th of this year?

(Testimony of Louis T. Robinson.)

A. Either later that same day or the next morning, I don't recall which.

Q. Very well.

And where did that take place, please?

A. That took place in my office.

Q. And was anyone else present?

A. No, sir.

Q. Will you please tell us what Mr. Howard and what you said?

Mr. Mouritsen: I object to that on the ground it is incompetent, irrelevant and immaterial.

Trial Examiner Lindsay: We will take a recess.

Mr. Clark: We are taking an adjournment and that is the question as we will leave it.

Trial Examiner Lindsay: We will adjourn until 9:30.

(Whereupon, at 4:40 o'clock p. m., an adjournment was taken until 9:30 o'clock a. m., Tuesday, June 13, 1939.) [2429]

American Legion Hall
Corcoran, California
Tuesday, June 13, 1939.
9:30 O'clock A. M. [2430]

PROCEEDINGS

Trial Examiner Lindsay: Hearing called to order.

Mr. Clark: The Respondents are ready, Mr. Examiner.

Mr. Mouritsen: Ready for the Board.

Trial Examiner Lindsay: You may proceed.

Mr. Clark: Now, Mr. Examiner, before we continue with Mr. Robinson, I would like to call your attention and that of counsel for the Board to the following matters in yesterday's transcript.

First, at page 2335, line 4, in a question put by me to Mr. Botts, it reads as follows:

"Mr. Botts, during your cross examination by Mr. Mouritsen on last Saturday morning, you testified in effect that the only date you furnished—" and the word "date" should be "dates" to make the question intelligible.

Trial Examiner Lindsay: That is right.

Mr. Clark: Is that stipulated, Mr. Mouritsen?

Mr. Mouritsen: Yes.

Mr. Clark: Now, on the same page at line 17, there is an answer by the witness "The question isn't quite fair," and his answer was "The question isn't quite clear."

Mr. Mouritsen: So stipulated.

Mr. Clark: Very well.

Now, at page 2360 at line 24, as a part of my statement with respect to Mr. Winslow's testimony, the record reads, [2432] "At that moment I distinctly remember E. C. Salyer, who had just been on the stand, coming up and patting me on the arm and saying", and I remember saying "coming up and taking me by the arm."

Mr. Mouritsen: That is so stipulated.

Mr. Clark: Now, on page 2388 at line 2, during examination of the witness Botts by the Trial Examiner, the preceding question had to do with what was discussed at the Directors' meeting on January 26th, and finally the question is asked, at line 1, page 2388—we will have to go back a little bit to get the sense of it—on page 2387 at line 24:

“Q. Was there anything else discussed at that meeting? A. You mean along this line?

“Q. Yes, about the barbecue to be held in February.

“A. I don't recall. It was simply what was laid on the table and left at the discretion of the Executive Committee.”

Now, I am quite sure the answer was “No, that nothing further was discussed,” and I wonder whether you have a note on that, Mr. Lindsay. That is where you were examining Botts.

Trial Examiner Lindsay: Yes, I remember. I think the answer as it is is correct, but I will see.

Mr. Clark: Whatever was said there. My recollection is that he said “No.”

Trial Examiner Lindsay: That is Mr. Botts' testimony?

Mr. Clark: Yes, sir, when you examined him at the con- [2433] clusion of his examination.

Trial Examiner Lindsay: I have a note here with those very words, “I don't recall.”

Mr. Clark: Oh, you have? Then that probably is what he said, because it could hardly—

Mr. Mouritsen (Interrupting): That is my impression, that it was left to the discretion of the Executive Committee. That is the way it remains to me.

Mr. Clark: I thought he positively said that nothing else was discussed. Apparently it was "I don't recall."

Trial Examiner Lindsay: I wrote it down right after I got through examining him, and I have those words, so I imagine that is correct.

Mr. Clark: That must have been where it came from.

Now, also, on page 2392, line 3, the question was asked Mr. Botts, apparently by Mr. Mouritsen:

"Then do I understand that after Mr. Riley, from what you have said, made the arrangements to have it brought down here and to pay for it himself—or rather, to have it charged to his account, that the Association then paid for that check, which is Board's Exhibit 31?"

Trial Examiner Lindsay: Yes.

Mr. Clark: "After it was offered to him on the basis of that."

I think the answer was "After it was offered to them on [2434] the basis of that." He is obviously referring to the Associated Farmers of Kings County.

Will you read that question and answer, Mr. Mouritsen, and give me your idea on that?

Trial Examiner Lindsay: There is one word left out of there in the question, too, which I recall.

Mr. Clark: I wonder what it is? We can probably stipulate.

Trial Examiner Lindsay: Read the question and I will tell you.

Mr. Clark: "Then do I understand that after Mr. Riley, from what you have said, made the arrangements to have it brought down here and to pay for it himself—or rather, to have it charged to his account, that the Association then paid for that check——"

Trial Examiner Lindsay (Interrupting): "For it with that check."

Mr. Clark: Probably it should be "paid for it with that check."

So stipulated.

It then reads this way: "That the Association then paid for it with that check."

Mr. Mouritsen: Yes.

Mr. Clark (Continuing): ——"which is Board's Exhibit 31."

Then the answer should read "After it was offered to them [2435] on the basis of that."

Now, I don't know what he said after "on the basis," but the reference to it being offered to someone is to the Associated Farmers of Kings County, obviously.

(Discussion outside the record.) [2436]

Mr. Clark: Mr. Robinson, please.

LOUIS T. ROBINSON

the witness on the stand at the time of adjournment, having been previously duly sworn, resumed the stand and further testified as follows:

Direct Examination

(Continued)

Mr. Clark: Now, may we have the last question read, Mr. Examiner, of yesterday?

Trial Examiner Lindsay: They don't have it. You will have to get it from the transcript.

Mr. Mouritsen: You have it there in the transcript.

Mr. Clark: Yes.

Q. Now, Mr. Robinson, will you please tell us whether or not you had any further conversation with Mr. Maurice Howard of the National Labor Relations Board after January 17th of this year?

Please answer yes or no.

A. Yes, sir.

Q. And when was that, please?

A. The next morning.

Mr. Mouritsen: Could we have that fixed, please?

Mr. Clark: What is that?

Mr. Mouritsen: Could we have that date fixed? I don't recall it.

Q. (By Mr. Clark) What was the date on the next morning? [2437] A. January 18th.

Q. Where did that conversation take place, Mr. Robinson? A. In my office.

Q. Who, if anyone else, was present?

(Testimony of Louis T. Robinson.)

A. No one else.

Q. All right.

Now, going back for a moment to the conversation which you have already testified to as having taken place on January 17th, and the substance of which you testified to yesterday, I want to ask you whether you stated in substance or effect at that time and place to the persons present the statement which appears attributed to you in Respondent Boswell's Exhibit 3 in this case. Please examine it.

A. (Examining document) I stated that in effect, yes.

Q. All right.

Am I correct in stating, Mr. Robinson, that the statement in Respondent Boswell's Exhibit 3 to which you referred reads as follows: "No foreman or anyone else is authorized to make any statement regarding any employee's membership or non-membership in any union by the company and that no employee's position would be affected because of membership in any union"—now, do I understand that you made the statement substantially to that effect at this meeting of January 17th, 1939, to which you testified yesterday? A. I did. [2438]

Q. Do you remember anything else that was said along that line by any of the persons present at that meeting, namely, the one of January 17, 1939?

A. No, I don't believe I do.

Q. How did that subject come up for discussion, if you remember?

(Testimony of Louis T. Robinson.)

A. That was the company's position and has always been the company's position, and I had been instructed to maintain that position, and I didn't hesitate to explain to Mr. Howard or anyone else interested what that was.

Mr. Mouritsen: I move that the answer go out as not responsive to the question.

Mr. Clark: I will submit it.

Mr. Mouritsen: The question was, "How did that subject come up," and I submit it is not responsive.

Mr. Clark: It is responsive.

Trial Examiner Lindsay: I think that the answer should go out and then you can follow it up.

Read the question.

(The question referred to was read by the reporter, as set forth above.)

Q. (By Mr. Clark) Now, will you please answer it again?

Trial Examiner Lindsay: How did you get to talking about that is your question, isn't it?

Mr. Clark: Yes, Mr. Examiner. [2439]

The Witness: Well, the business of Mr. Howard as he explained it to me was to investigate labor trouble at our plant. He discussed the matter with me and I explained the company's position.

Mr. Clark: All right.

Q. And am I correct in stating that in explaining the company's position you made this statement of which we just referred to? A. Yes, sir.

(Testimony of Louis T. Robinson.)

Q. All right.

Had you made that statement or any statement substantially similar to it on a prior occasion to Mr. Prior? A. Yes, sir.

Q. And can you just briefly locate those prior occasions for us?

A. I told Mr. Prior that on the conversation that took place about September 1st and I told Mr. Prior that in the conversation that took place the morning of November 19th.

Q. I see.

Now, coming back again, then, to the further conversation with Mr. Maurice Howard which you have located as having taken place on the morning of January 18, 1939, I will ask you what, if anything, was said by Mr. Howard and what, if anything, was said by you during that conversation?

Mr. Mouritsen: I object to that upon the ground it is [2440] incompetent, irrelevant and immaterial and not tending to prove or disprove any of the issues in this case.

Mr. Clark: I will promise to connect it up, Mr. Examiner.

Trial Examiner Lindsay: He may answer.

The Witness: Mr. Howard told me that he wanted the company to discharge all the non-union employees that had taken part in the events of around 10:00 o'clock of the morning of November 18th; that he wanted the company to hire union men in their places; and that he wanted the employees' association dissolved.

(Testimony of Louis T. Robinson.)

I told Mr. Howard that there was no labor dispute between the management and its employees, that any dispute that existed was between two groups of employees; that we were not going to fire anybody that was giving satisfactory services on the job; that we had nothing to do with the organization of the Employees' Association and we would make no efforts nor any attempts of any kind to dissolve it.

Mr. Howard then told me that if I didn't do that, he would call the Labor Board hearing and I would get a lot worse. He took a little pamphlet out of his pocket that had a number of decisions in it and pointed out some of the decisions that had been found at Labor Board hearings.

I told Mr. Howard that I thought none of those cases were similar to our position and that I would stand just [2441] where I told him.

He said, "All right. Then you will get the Board hearing."

I told him to use his own judgment about that.

Q. (By Mr. Clark) During that conversation, Mr. Robinson, did you again call Mr. Howard's attention to the position the company had taken with respect to its employees joining labor unions?

A. I don't definitely recall bringing that up again at that time, but I pointed that out to Mr. Howard on several occasions.

Mr. Mouritsen: I move the latter part go out as not responsive.

(Testimony of Louis T. Robinson.)

Trial Examiner Lindsay: It may go out.

Q. (By Mr. Clark) You had, however, called that to his attention the preceding day, you said?

Mr. Mouritsen: Objected to as already asked and answered, leading and suggestive.

Trial Examiner Lindsay: Sustained.

Q. (By Mr. Clark) Was anything else said at this conversation between you and Mr. Howard on the morning of January 18th that you remember in substance?

A. No, I don't believe I recall anything else.

Q. Very well.

Now, at that time did you make any statement to Mr. [2442] Howard with respect to whether or not you would discharge men who were then on your payroll?

A. I told him I would not discharge men who were on my payroll as long as their services were satisfactory and I had a job for them.

Q. Very well.

Now, subsequent to this occasion, Mr. Robinson, that is, subsequent to the Howard conversation on the morning of January 18th, did you have a further conversation with Mr. Prior? A. Yes, sir.

Q. Will you please tell us when that took place as nearly as you can remember it?

A. To the best of my recollection, it is that the conversation with Mr. Howard took place on the morning of the 18th and the conversation with Mr. Prior took place on the afternoon of the 18th.

(Testimony of Louis T. Robinson.)

Q. Very well.

Where did that conversation take place, please?

A. In my office.

Q. At the Boswell plant? A. Yes, sir.

Q. And who, if anyone, else was present?

A. No one else.

Q. Will you please tell us what Mr. Prior said to you on [2443] that occasion and what you said to him, as nearly as you can remember?

A. Mr. Prior said he was calling on me at the suggestion of Mr. Howard and he wanted to know if there had been any change in the company's position after Mr. Howard's visit. [2444]

I told him, No, Mr. Howard's visit had not changed the Company's position at all. That was about all there was to the conversation.

Q. Will you please state whether or not this interview between you and Mr. Prior, that is, the one to which you have just testified, was pursuant to any previous appointment or arrangement between you and him? A. No, I don't think so.

Q. Very well.

Now, Mr. Robinson, I show you Board's Exhibit 25 in this matter, which is a letter, rather an inter-office communication, dated November 19th, 1938, addressed to you, namely, Mr. L. T. Robinson, by Mr. G. L. Hammond, and signed by Mr. G. L. Hammond.

Will you please tell us whether or not you received that communication from Mr. Hammond on or about the date it bears?

(Testimony of Louis T. Robinson.)

A. (Examining document) I did.

Q. And will you please tell us, Mr. Robinson, whether your receiving that from Mr. Hammond was the result of any prior request which you had made upon Mr. Hammond?

A. I requested Mr. Hammond——

Q. (Interrupting): Please answer the question.

A. Yes, sir.

Q. All right.

Will you please state what that was?

A. I requested Mr. Hamond to make an investigation of the [2445] events of November 18th, and to make a written report to me concerning the same.

Q. I believe you told us that Mr. Hammond is the person, as between you and him, who has the immediate charge of labor in the plant?

A. That is correct.

Q. All right.

Will you please state whether Mr. Hammond was present at the Corcoran plant on November 18th, 1938, when the disturbance which has been testified to in this case between the employees occurred?

A. He was not.

Q. All right.

Now, how soon was it after the matters which occurred on the morning of November 18th had happened that you first saw Mr. Hammond?

A. I didn't see Mr. Hammond until the morning of November 19th.

Q. All right.

(Testimony of Louis T. Robinson.)

And am I correct in stating that you thereupon asked him to make a complete investigation of the occurrences of the preceding morning, namely, those of November 18th? A. That is correct.

Q. All right.

And is this inter-office communication which has been marked Board's Exhibit 25 Mr. Hammond's report to you pursuant [2446] to that request?

A. It is.

Q. Very well.

Now, will you please state whether or not you had that report before you at the time you wrote the letter dated November 18th, which has been admitted as Board's Exhibit No. 24 in this case, being a letter from you to Colonel Boswell?

A. I did not.

Trial Examiner Lindsay: May I have 18?

Mr. Clark: Yes, sir.

Trial Examiner Lindsay: And the other one.

(The documents referred to were passed to the Trial Examiner.)

Q. (By Mr. Clark) Mr. Robinson, can you tell us whether or not the mill, that is the oil mill at the Corcoran plant, commenced operations on July 1st, 1938? On or about?

A. On or about July 1st, yes, sir.

Q. All right.

And can you tell us for approximately how long it continued to operate on that particular run?

A. Oh, it operated about two and a half months.

(Testimony of Louis T. Robinson.)

Q. I see.

So that would be sometime in the middle of September, is that right? A. Yes, sir. [2447]

Q. Now, will you please state from what source the cotton seed came which was milled at the Corcoran plant during that particular run of the oil mill, that is, from July 1st to the middle of September?

A. The cotton seed for that run came from purchases made by us out of the 37-38 crop.

Q. All right.

In other words, had you had that cotton seed in storage up until July 1st? A. Yes, sir.

Q. All right.

And it was cotton seed which had come in to the possession of the Boswell Company during the preceding season, is that correct?

A. That is correct.

Mr. Mouritsen: I object to that as leading and suggestive. I move that the answer go out.

Mr. Clark: I am trying to cover some ground. Those are only preliminary questions, your Honor.

Trial Examiner Lindsay: I know. Mr. Clark, please don't lead the witness. Let him testify.

Mr. Clark: All right.

May I have the last question and answer?

(The record referred to was read by the reporter, as set forth above.) [2448]

Mr. Clark: All right.

Q. Now, can you tell us, Mr. Robinson, why it

(Testimony of Louis T. Robinson.)

was that the mill, the oil mill, was operated during the period in question, that is, from about July 1st, 1938 to the middle of September, 1938, and that this seed was milled at that time?

A. Why, we buy the cotton seed and manufacture that into by-products of the cotton seed and have to sell the by-products. We have got to make a profit on that to stay in business. The time when we milled those seed is, in our opinion, the best marketing condition for the milling of the seed and the selling of the by-products. It was our opinion that it was good business to carry those seed over for a while until July 1st. We thought it was good business to mill them up then and sell the by-products.

Q. I see.

Will you please tell us when the fiscal year of the Boswell Company ends?

A. It ends on June 30th of each year.

Q. I see.

And have you paid, or rather, have you carried this cotton seed in storage up to that time?

A. Yes, sir.

Q. Do you know a person by the name of Al Chestnut?

A. Yes, sir.

Q. Who is he, please? [2449]

A. He is an employee of the Peterson Farms Company.

Mr. Mouritsen: Peterson Farms?

The Witness: Company.

(Testimony of Louis T. Robinson.)

Q. (By Mr. Clark): Now, has he ever been employed by the J. G. Boswell Company?

A. Yes, sir.

Q. And do you know when?

A. He was employed during the early part of this year.

Q. I see.

And what was the occasion for his employment?

A. The J. G. Boswell Company contracted to pump the water off of the Lovelace Reclamation District. According to the terms of the contract, it would be one price if we furnished men to supervise the running of the engines or the pumps, and another price if they furnished the men to supervise that operation. They elected to furnish the men to supervise that operation, and Al Chestnut was one of the men they furnished, the Peterson Farms Company being located in the Lovelace Reclamation District. That District didn't have any compensation insurance, so we carried him on our payroll to keep him covered by compensation, and at the time we made the settlement with them, that was taken into consideration in the settlement. [2450]

Q. All right.

In what capacity was Mr. Al Chestnut employed by the Peterson Farms Company?

A. He operated the motors and engine that operated the pumps that pumped the water off the district.

Q. Was he ever employed by the Boswell plant here in Corcoran? A. No, sir.

(Testimony of Louis T. Robinson.)

Q. All right.

Now, do you know Mr. Les Chestnut?

A. I know Lee Chestnut.

Q. Lee Chestnut, rather? A. Yes, sir.

Q. And who is he, please?

A. He is an employee of the Peterson Farms Company.

Q. All right.

And is the same true, are the same facts, rather, true of Mr. Lee Chestnut as you have just told us are true concerning Al Chestnut?

A. Yes, sir.

Mr. Clark: That is all—one more question.

Q. In other words, has Mr. Lee Chestnut been employed by the J. G. Boswell Company at its Corcoran plant? A. No, sir.

Q. At any time? [2451]

A. No, sir.

Mr. Clark: That is all.

Cross Examination

Q. (By Mr. Mouritsen): Mr. Robinson, I believe you stated that you were in charge of the financing operations of the J. G. Boswell Company, is that correct?

A. Well, that is part of my duty. I am not in sole charge of the financing.

Q. But you make loans to the farmers here in this vicinity, is that correct?

A. That is correct, subject to approval by the head office.

(Testimony of Louis T. Robinson.)

Q. And are you the man to whom the farmers in the vicinity come if they desire to obtain loans from the Boswell Company?

A. Yes, sir. They either come to me or Mr. Armour.

Q. And with reference to any loans made to farmers in this vicinity you are the man locally to pass on the loan, is that correct?

A. That is correct.

Q. Any work that Mr. Armour does in that connection is subject to your approval, isn't that correct?

A. That is correct.

Q. Now, you are acquainted with the financing operations of the J. G. Boswell Company, are you not?

A. Yes, sir.

Q. You were also acquainted with the financing operations of, I believe, three subsidiary companies of the Boswell Com- [2452] pany?

A. I don't believe we have three subsidiary companies. The financing company is known as the J. G. Boswell Farm Loan Company. I am familiar with that.

Q. Are there any other companies affiliated with the Boswell Company through which loans are made?

A. No. That is the lending agency, the J. G. Boswell Farm Loan Company.

Q. Now, I will ask you to what amount, approximately, E. C. Salyer is indebted to the Boswell Company.

(Testimony of Louis T. Robinson.)

Mr. Clark: I object to that upon the ground it is incompetent, irrelevant and immaterial. It is on a confidential matter. I have no objection for this witness to state whether or not Mr. Salyer is indebted to the J. G. Boswell Company. In fact I think Mr. Salyer made that statement on the stand, but as to the amount of Mr. Salyer's indebtedness, I submit that is incompetent, irrelevant and immaterial and is a violation of his personal affairs which he has a right to keep confidential. There is no connection shown at all between Mr. Salyer or any act performed by him and any of the respondents in this case.

Trial Examiner Lindsay: He may answer.

The Witness: Well, we finance Mr. Salyer on a large acreage of grain and a rather large acreage of cotton. I would say that we have loaned him about \$8.00 an acre on his [2453] grain and have agreed to loan him around \$20 an acre on his cotton.

Q. (By Mr. Mouritsen): And, as a matter of fact, Mr. Salyer is indebted to you at the present time in approximately the amount of \$188,000, plus accrued interest, isn't he?

Mr. Clark: Same objection, Mr. Examiner.

Trial Examiner Lindsay: Same ruling.

The Witness: That is approximately correct.

Q. (By Mr. Mouritsen): And he was indebted to you in practically that amount on January 30, 1939, was he not?

(Testimony of Louis T. Robinson.)

Mr. Clark: May my objection be deemed to run to all this line of inquiry?

Trial Examiner Lindsay: Yes.

The Witness: The indebtedness, Mr. Mouritsen, varies with the progress of the crop. On January 3rd the chief indebtedness——

Mr. Mouritsen (Interrupting): January 30th.

The Witness: January 30th, the chief indebtedness against the grain crop had already been expended and there was practically nothing against the cotton. We loaned him the necessary funds to produce his crop and as the work in producing that crop progresses, the account is increasing accordingly. [2454]

Q. Can you give us the approximate figure in which Mr. Salyer was indebted to you on January 30th?

A. I would think that he had approximately \$6.00 an acre in his grain at that time, and nothing in his cotton.

Q. And that would amount to what?

A. In excess of one hundred thousand dollars.

Q. Now, Mr. Robinson, I will show you Respondent Boswell's Exhibit 13, and directing your attention to that part of the Exhibit that refers to proper representatives of the Company——

Mr. Clark (Interrupting): Which one is that? Would you indicate it for my benefit, or let me see the Exhibit?

(The document referred to was passed to Mr. Clark.)

(Testimony of Louis T. Robinson.)

Q. (By Mr. Mouritsen): I believe you testified, Mr. Robinson, that you requested that Mr. Larson put that in there, that is, put the expression "proper representatives" in, is that correct?

A. I requested that he substitute "proper representatives" for "supervisory employees."

Q. And you had some basis for making such a request, did you not?

A. I had a reason for it.

Q. Now, let me ask you what—to what people did you refer when you referred to proper representatives of the Company?

A. Anybody authorized by the Company to represent it.

Q. In other words, only yourself and Mr. Gordon Hammond, is [2455] that correct?

A. As to matters pertaining to employment and personnel around the plant, that is correct.

Q. So when you posted that notice, you were telling the employees that only yourself and Mr. Gordon Hammond would not discriminate against them for Union activities, is that correct?

Mr. Clark: Objected to upon the ground it is argumentative and improper cross examination.

Trial Examiner Lindsay: He may answer the question.

Mr. Clark: He did it at the approval of the National Labor Relations Board.

The Witness: This is Mr. Larson's request that we post this, and it satisfied him.

(Testimony of Louis T. Robinson.)

Mr. Mouritsen: May I have an answer to my question?

Trial Examiner Lindsay: Read the question again, and you answer the question.

(The question referred to was read by the reporter, as set forth above.)

Mr. Clark: Now, before it is answered, might I amplify my objection?

Trial Examiner Lindsay: Yes.

Mr. Clark: Very well. I object to that question upon the ground it is argumentative, and that the document itself concerning which the witness is being examined, and which the [2456] evidence shows was posted in the plant, is the best evidence of what notification was given to the employees.

Trial Examiner Lindsay: Now, have you finished?

Mr. Clark: Yes, sir.

Trial Examiner Lindsay: You may answer.

The Witness: Will you read the question again?

(The record referred to was read by the reporter, as set forth above.)

The Witness: I was telling the employees that they could join any Union that they saw fit to join.

Q. (By Mr. Mouritsen): Mr. Robinson, you are not answering my question.

I will request that the witness be instructed to direct his attention to the question, and answer the question put to him.

Trial Examiner Lindsay: Yes.

(Testimony of Louis T. Robinson.)

Mr. Clark: I submit that answer is responsive.

Trial Examiner Lindsay: Read the question, please.

(The record referred to was read by the reporter, as set forth above.)

The Witness: That is not my idea of what I was telling the employees.

Mr. Mouritsen: Very well.

Q. Now, we will get to the matter in another way, then.

Wasn't it your testimony yesterday that only yourself and [2457] Mr. Gordon Hammond were proper representatives of the Company with reference to employment matters?

A. At Corcoran, yes, sir.

Q. At Corcoran.

Now, this notice that is Respondent Boswell's 13, was posted in Corcoran, wasn't it?

A. That is correct.

Q. That is the only place it was posted?

A. That is correct.

Q. Now, you requested of Mr. Larson that he change the wording of the notice that he proposed to you, namely, Respondent Boswell's Exhibit 11, to its present form, did you not?

A. Yes, sir.

Q. Which is Respondent Boswell's 13.

Now, when you posted the notice, to what people of the Boswell Company did you refer by using the expression "proper representatives."

(Testimony of Louis T. Robinson.)

A. I was referring that regardless of what anybody else said, whether or not they worked for the Company, the proper representatives of the Company were telling them they could join any Union they wanted to.

Q. All right.

Now, who were the proper representatives to whom you referred in that notice? [2458]

A. At Corcoran, Louie Robinson and Gordon Hammond.

Q. And when you posted that notice, you didn't have in mind Joe Hammond or Tom Hammond, is that correct?

Mr. Clark: I object to that, Mr. Examiner, upon the ground it is argumentative. It has been asked and answered, and obviously is an attempt to impeach an act authorized and accepted by the National Labor Relations Board itself. The evidence shows that Mr. Larson approved that notice, and approved that change, and approved the place where it was posted, and that this was done pursuant to his instructions.

Now, that seems to me, Mr. Examiner, is the end of it. It is an act of the National Labor Relations Board which this Company has performed, and it doesn't lie in this gentleman now to attempt to impeach it.

Mr. Mouritsen: There is no attempt at impeachment, Mr. Examiner. I am merely trying to ex-

(Testimony of Louis T. Robinson.)

plain an ambiguous document to which I am assuredly entitled.

Mr. Clark: An ambiguous document tendered by your own representative and foisted on the Company.

Trial Examiner Lindsay: Well, just a moment. I don't want any more statements like that. The right to object to a question and state your reasons for your objection does not include the right to a lot of unnecessary argument. We have had just too much of that in this hearing. Those arguments really don't mean anything unless they are stated in your objections. [2459]

Now, after you have made the objection and have stated all of your reasons, then your duties are ended

Let us go along here in a gentlemanly manner. That is the only proper way to try a lawsuit.

Now, read the question back.

(The record referred to was read by the reporter, as set forth above.)

Mr. Clark: Same objection, Mr. Examiner.

Trial Examiner Lindsay: Now, did you understand the question?

The Witness: I understand him to mean that I——

Trial Examiner Lindsay (Interrupting): All right, then, answer.

The Witness: I didn't finish. I understood him to mean do I think that Joe or Tom Hammond is a

(Testimony of Louis T. Robinson.)

proper representative of the Company in the matter of labor personnel in the Company.

Trial Examiner Lindsay: Might I have that question—that answer, rather?

The Witness: I understood him to mean is he asking me that.

Mr. Clark: May I have the answer re-read?

The Witness: I haven't answered the question.

Trial Examiner Lindsay: I thought you had.

The Witness: I was giving you my understanding of what his question was. I was not giving an answer. [2460]

Trial Examiner Lindsay: All right.

Now, you may answer the question. [2461]

Mr. Clark: May I have that comment re-read, Mr. Examiner?

Trial Examiner Lindsay: Yes.

(The record referred to was read by the reporter, as set forth above.)

Trial Examiner Lindsay: Is that the meaning of your question?

Mr. Mouritsen: I will reframe the question.

Trial Examiner Lindsay: Now, off the record just a moment.

(Here followed discussion off the record.)

Trial Examiner Lindsay: Now, reframe your question.

Q. (By Mr. Mouritsen): Now, Mr. Robinson, I will ask you whether or not you referred to Tom and Joe Hammond as proper representatives of the company in respondent Boswell's 13?

(Testimony of Louis T. Robinson.)

A. I did not.

Q. Nor to Bill Robinson, is that correct?

A. You are asking me my opinion. You understand that is not my document. I am giving you my opinion.

A proper representative is a continuing proposition. A man may be a proper representative today and not tomorrow.

Trial Examiner Lindsay: At the time the document was written.

The Witness: At the time the document was written, I didn't refer to Tom and Joe Hammond as a proper representative. [2462]

Q. (By Mr. Mouritsen): Nor to Bill Robinson?

A. No.

Q. And in Respondent Boswell's 13 you did not refer to Oscar Busby, is that correct?

Mr. Clark: I want the objection to be deemed to run to all this line of testimony, Mr. Examiner, on the ground it is argumentative, and the record shows that a representative of the National Labor Relations Board drafted the document and accepted it.

Trial Examiner Lindsay: As I understand it, it was drafted and changed at the request of this witness.

Mr. Clark: And okayed by the Board.

The Witness: The only answer I can make, Mr. Mouritsen, is that in my opinion Oscar Busby is not authorized by the company to represent it in

(Testimony of Louis T. Robinson.)

any matters of employment and labor personnel.

Q. (By Mr. Mouritsen): And you had no reference to him at the time Respondent Boswell's 13 was posted, is that correct?

A. That is my opinion. I didn't.

You are asking me on the basis that that is my report. I didn't do it.

Trial Examiner Lindsay: He is only questioning you on the basis of what that report says. You answer the question.

The Witness: I can only give you an opinion as to what [2463] the report is supposed to be.

Trial Examiner Lindsay: You tell us——

The Witness (Interrupting): I want it clear: I am only giving my opinion of the document. I didn't write the document.

Mr. Mouritsen: Mr. Examiner, this demonstrates clearly the interruptions caused by counsel's tactics in the matter. Not only does he interrupt and make objections for the purpose of confusing the record—the record will bear that out—but I have not been able to cross examine the witness properly since the Respondent has opened its case.

Mr. Clark: I haven't opened my mouth and I haven't said anything. I ask that Mr. Mouritsen's statement be stricken from the record. It is uncalled for. It is uncalled for—in fact, I have sat very still here, a proverbial mouse, while Mr. Robinson has been doing the best he can to answer these vague questions.

Trial Examiner Lindsay: Do you understand the question?

(Testimony of Louis T. Robinson.)

The Witness: I think so.

Trial Examiner Lindsay: You are in authority out there, aren't you?

The Witness: Yes, sir.

Trial Examiner Lindsay: You know who the officials are you are referring to in that document, don't you?

The Witness: (Pause) [2464]

Trial Examiner Lindsay: Regardless of who wrote them?

The Witness: I know who, I think, yes, sir.

Trial Examiner Lindsay: That is all we want to know.

Q. (By Mr. Mouritsen): I believe I asked you last regarding Oscar Busby.

A. I think I answered that.

Q. What was your answer? If you made an answer, it has slipped me.

A. In my opinion Oscar Busby is not authorized to represent the company in employment or labor personnel.

Q. And you had no reference to Oscar Busby as a proper representative in Respondent Boswell's 13, is that correct?

A. That is the way I feel about it, yes, sir.

Q. And I will ask whether or not you had any reference to Rube Lloyd as a proper representative in Respondent Boswell's 13.

A. You have in mind you are continuing to require me to answer questions like I wrote the docu-

(Testimony of Louis T. Robinson.)

ment. I would like to get in the fact I am giving you my opinion.

Trial Examiner Lindsay: Mr. Robinson, that statement is unnecessary because I told you that was not the theory.

The Witness: On the basis of that——

Trial Examiner Lindsay (Interrupting): Answer the question.

The Witness: On the basis of that I will be glad to [2465] answer.

Mr. Clark: May I have the last few words of that answer, Mr. Examiner?

Trial Examiner Lindsay: Yes.

Read the answer.

(The record referred to was read by the reporter, as set forth above.)

Trial Examiner Lindsay: Answer the question.

The Witness: I don't believe there is any pending. I don't know.

Trial Examiner Lindsay: I mean as they are asked of you.

Q. (By Mr. Mouritsen) And I will ask you again, Mr. Robinson, if when you posted Respondent Boswell's 13 you referred there—you considered Rube Lloyd as a proper representative of the company.

A. I did not consider him a proper representative.

Q. Mr. Robinson, I will direct your attention to the conversation that you had with Mr. Prior on

(Testimony of Louis T. Robinson.)

or about September 2nd, 1938, and ask you if you recall testifying about such a conversation?

A. Yes, sir.

Q. And do you recall testifying in that conversation about Mr. Gilmore? A. Yes, sir. [2466]

Q. Do you recall testifying in that conversation that you had heard that Mr. Gilmore was working with Mr. Prior in the organization of the union?

A. I recall testifying that his name came up in the conversation, and perhaps I heard that. I don't recall just how we came to discuss that phase of it.

Mr. Mouritsen: May I direct counsel's attention to page 2400 of the official transcript, line 25.

Mr. Clark: This is part of Mr. Robinson's testimony?

Mr. Mouritsen: Of yesterday, yes.

Mr. Clark: I suggest, then, he be allowed to follow you with a copy of the transcript, if you are going to read it.

Mr. Mouritsen: Yes. Do you have that?

Mr. Clark: I have page 2400.

Mr. Mouritsen: And line 25?

Mr. Clark: Yes.

Q. (By Mr. Mouritsen) Now, Mr. Robinson, I will show you page 2400 of the official transcript, line 25.

Question, I believe, by Mr. Clark. And he asked you: "And how was it that Gilmore's name came into the conversation at all, Mr. Robinson, if you remember?"

(Testimony of Louis T. Robinson.)

And the answer by yourself: "I don't recall. I have a recollection, rather, that I heard that Mr. Prior was working with Mr. Gilmore. I might have brought it up myself."

Do you recall so testifying yesterday? [2467]

A. Yes, sir.

Q. And your recollection was that you had heard that Mr. Gilmore was working with Mr. Prior, isn't that correct?

A. That is correct.

Q. And the date was around September 2nd or thereabouts that you had the conversation with Mr. Prior, isn't that correct?

A. That is correct.

Q. Now, how long before that had you heard that Mr. Gilmore was working with Mr. Prior?

A. I do not recall; the first knowledge that I had that Mr. Prior was endeavoring to form a union was some time after the American Legion Hall meeting in July, so the best I could say would be between the two dates.

Mr. Clark: Between what?

Mr. Mouritsen: Between the two dates.

Q. What is your best recollection in the matter as to when you first heard that Mr. Gilmore was working with Mr. Prior?

A. I could give no better recollection than I have already given you.

Q. Well, wasn't it immediately after the meeting at the American Legion Hall in July was held that you first heard about Mr. Gilmore working with Mr. Prior?

A. It might have been. I don't definitely recall.

(Testimony of Louis T. Robinson.)

Mr. Clark: I think the record shows that meeting was [2468] held July 13th, Mr. Mouritsen.

Mr. Mouritsen: I believe it so indicates.

Mr. Clark: Yes.

Q. (By Mr. Mouritsen) Now, directing your attention, Mr. Robinson, to the conference of January 17, 1939, at which Mr. Maurice Howard was present and Mr. Bill Boswell and a number of other employees, do you have that conference in mind about which you testified yesterday?

A. Yes, sir.

Q. Now, I will ask you whether or not Bill Boswell took any part in that conference?

A. I am reasonably certain he did. I don't recall exactly what he said.

Q. Let me ask you, then, didn't Mr.—at that time when Mr. Spear described the incident with reference to himself that had taken place on November 18, 1938, didn't Mr. Boswell make some statement?

A. I do not recall whether he did or not. [2469]

Q. Didn't he state after Mr. Spear had described the incident of November 18th, 1938—didn't he say, "Well, there wasn't any violence that had occurred at that time?"

A. I don't recall that statement.

Q. Well, do you recall anything that he said in that regard?

Mr. Clark: This is Mr. Bill Boswell?

Mr. Mouritsen: This is Mr. Bill Boswell.

(Testimony of Louis T. Robinson.)

The Witness: I don't believe I do, although I feel certain Mr. Boswell took part in the conversation.

Q. (By Mr. Mouritsen) Now, I will ask you, Mr. Robinson, if you have investigated the occurrences of November 18th, 1938, at which—at the time when this meeting took place, and after which a number of the Union employees left the plant? Did you make an investigation of that situation?

A. I didn't go out and make a special investigation, but I made inquiries and heard reports on it.

Q. What did you do? Call a number of the men into the office, is that correct?

A. No, I didn't.

Q. How did you make your investigation?

A. The principal investigation was through Mr. Hammond, and I talked to other parties about it, principally Mr. Hammond and Mr. Boswell and Mr. Armour.

Q. And that is Bill Boswell?

A. Yes, sir. [2470]

Q. And Gordon Hammond? A. Yes, sir.

Q. And what is Mr. Armour's first name?

A. Albert.

Q. Elbert; E-l-b-e-r-t? A. A-l-b-e-r-t.

Q. When did you make this investigation regarding the incident of November 18th, 1938?

A. Well, I testified I didn't make any special investigation, just——

Q. (Interrupting): You have outlined to us

(Testimony of Louis T. Robinson.)

what you did do. I want to know when you did the things you have described?

A. The events of that day were discussed by me with these parties immediately following it, anyway. Mr. Boswell wasn't there on November 18th. Mr. Hammond wasn't there at the time they occurred. He had been there earlier in the morning; and other than what I have already testified, I would think that the investigation was mostly after November 18th.

Q. Well, now, as a matter of fact, Mr. Robinson, you went right out of your office after the meeting to find out what happened, didn't you?

A. No, sir.

Q. Didn't you go right out to the yard and see what these employees were doing?

A. No, sir. [2471]

Q. Well, didn't you tell the employees you would be out and see what was happening at that time?

A. I told the employees to go out and start to work, and to cool down, and after awhile I would come out and see if it was straightened out.

Q. Well, now, what was your investigation on November 18th of that situation? Just what did you do to find out what had happened?

A. Before I thought it was the proper time to go out and try to straighten it out, as I had promised, I heard the Union men had left the plant.

Q. Well, now, what investigation of that occurrence did you make on November 18th, 1938?

A. I didn't make any special investigation.

(Testimony of Louis T. Robinson.)

Q. I don't want a special investigation. I want to find out if you made any investigation at all of the happenings of the morning of November 18th, 1938?

A. I don't recall any investigation of that specific incident. I didn't go out of the office around the plant talking to any group of employees about that incident that day, or any other day, for that matter.

Q. Well, did you talk with Mr. Armour on November 18th about the happenings that had taken place on that morning?

A. I am satisfied I did, but I don't recall any particular conversation about it. Mr. Armour's office is next to mine, and [2472] I would say he is in my office about half of the day.

Q. Weren't you convinced on November 18th, 1938, that physical violence had been done some of these Union men?

A. Well, I thought they had been more violent than I later found out actually occurred, yes, sir.

Q. But at least—strike that.

On November 18th you thought there had been considerable violence done these Union men, is that correct?

A. I didn't think any of them had been hurt, but I thought it had been a little rougher than Spear told me it was.

Q. Despite the fact that you knew there had been some violence, you still didn't go out to the

(Testimony of Louis T. Robinson.)

employees to see what had taken place, is that correct?

Mr. Clark: Objected to on the ground it is argumentative. It has already been asked and answered.

Trial Examiner Lindsay: He may answer.

The Witness: I intended to go out.

Trial Examiner Lindsay: The point is, did you? That is the question.

The Witness: No, I did not. [2473]

Q. (By Mr. Mouritsen) Now, Mr. Robinson, in Board's Exhibit 24, which I show you, you made the statement——

Mr. Clark (Interrupting): Which letter is that?

Mr. Mouritsen: Board's Exhibit 24, from Robinson to the Boswell Company, attention J. G. Boswell.

In the letter you say as follows: "They, therefore, took the three union men and bodily threw them off the property."

Q. What was the basis for that statement to Mr. Boswell?

A. The basis for that statement at that time was that I was under the impression that they had pushed all of those men across the property over to these offices.

Q. Now, isn't it your usual practice to have a substantial basis for any statements or reports that you make to your superiors?

(Testimony of Louis T. Robinson.)

Mr. Clark: Objected to upon the ground it is argumentative, Mr. Examiner.

Trial Examiner Lindsay: I think he may answer that.

The Witness: It is a good practice and I usually try to follow that, yes.

Q. (By Mr. Mouritsen) Now, also in Board's Exhibit 24 you make the statement—well, I will read from the statement that I read to you before:

“The employees then came to see me in a body and demanded that I fire the union men. They were pretty well worked up and I [2474] endeavored to calm them down and persuaded them to go back to work, both union and non-union. They did go back to work but the non-union men evidently kept a little pressure on the union men and in a few minutes the union men left their jobs.”

I will ask you what was the basis for that last sentence of Board's Exhibit 24 that I read to you?

A. The main basis was that Farr called me and told me the union men had left their jobs.

Q. And you were satisfied at that time that you wrote Board's Exhibit 24 to Mr. J. G. Boswell that pressure had been put on the union men after they returned to their jobs, is that correct?

Mr. Clark: Objected to on the ground it is ambiguous as to what pressure is and simply states—

Mr. Mouritsen (Interrupting): Very well.

Q. I will ask you what did you mean by the use of the word “pressure” in that letter to Mr. J. G. Boswell, Mr. Robinson?

(Testimony of Louis T. Robinson.)

A. I meant that the union men had gone back to work at my request and that they had later left the job.

Q. Well, what do you mean by the use of the word "pressure" in that letter, and that is Board's Exhibit 24?

A. I would say that I meant that the union men had thought it was best to leave the job and go to their homes.

Q. Well, what sort of pressure, though? What do you mean [2475] by that term? I don't think you have answered my question.

A. There was certainly a dispute there between the two groups of employees, and all the actions of that morning indicated that there was pressure by one group on the other group, and vice versa.

Mr. Mouritsen: I move that the answer go out as not responsive.

Trial Examiner Lindsay: Well, it may stand and you may question further on that.

Q. (By Mr. Mouritsen) As a matter of fact, Mr. Robinson, didn't you mean by the use of that word "pressure" that Bill Robinson and Kelly Hammond had gone in and shut off the motors of the machines that these men were running?

A. No, I didn't know that at the time of the dispute.

Q. When did you write the letter of Board's Exhibit 24?

A. To the best of my recollection right after the noon of November 18th.

(Testimony of Louis T. Robinson.)

Q. When was it? After lunch?

A. I do not believe I could fix it more definitely. I would say my best recollection is about the middle of the afternoon.

Q. What would that be, about 2:00 or 3:00 o'clock? A. About 2:00 or 3:00 o'clock.

Q. Now, Mr. Robinson, prior to the time when you wrote Board's Exhibit 24, then, the non-union men had appointed what you term a committee in Board's Exhibit 24 and that committee [2476] had been in to see you, isn't that correct?

A. (Nodding head affirmatively.)

Mr. Clark: I suggest you let the witness look at the reference in the letter.

Trial Examiner Lindsay: He may answer.

The Witness: That is correct.

Q. (By Mr. Mouritsen) You see the letter that I refer to there and the committee there, Mr. Robinson?

A. (Examining document) Yes, sir. [2477]

Q. Surely.

They had been in to see you before you wrote Board's Exhibit 24, isn't that correct?

A. That is correct.

Q. Now, I believe you testified before that Mr. Busby, Mr. Lloyd and Mr. Sitton were the three men from the plant who came in to see you, isn't that correct?

A. That is my best recollection.

Q. And they work during the daytime, don't they? A. Yes, sir.

(Testimony of Louis T. Robinson.)

Q. And they did at that time, didn't they?

A. Yes, sir.

Q. And I will ask you if they didn't leave the plant during working hours for the purpose of making this excursion to Hanford to see the District Attorney?

A. It would certainly appear that way.

Q. Isn't it a fact they did that?

A. I think it is.

Q. Didn't they obtain permission from you to do that, Mr. Robinson?

A. No definite permission that I recall.

Q. It was done with your assent, though, isn't that correct?

A. I don't recall a request. I will state if they had asked for it, I would have given it to them.

Q. And as a matter of fact, you never reprimanded them or [2478] deducted anything from their pay for taking their time off? A. No, sir.

Q. They were paid for the time they went over and asked the District Attorney about setting up this Company Union, isn't that correct?

A. That is correct.

Q. Now, at the time when they called on you, that is, referring to these three men, didn't they say something to you about holding a meeting in the plant that evening? A. Not that I recall.

Q. What is your best recollection as to when you first heard that there was going to be a meeting of the employees in the plant that night?

(Testimony of Louis T. Robinson.)

A. My best recollection is quite late—I just don't recall exactly when I heard that, or who I heard it from. I might have heard it from these men. I don't know.

Q. Is it your recollection that you had or had not left the plant at the time you heard there was to be a meeting of the employees in the plant that night? A. I don't believe I follow that.

Q. What is your recollection? Had you heard it before you left the plant, or after you left the plant?

A. Do you mean before the end of the day's work?

Q. Strike that.

When did you leave the plant on November 18th, 1938? [2479]

A. Oh, I don't recall. My usual hour is around 5:00 o'clock.

Q. And your best recollection is that you left about 5:00 o'clock on that day, is that correct?

A. I have no exact recollection as to when I left.

Q. Very well.

Now, I will ask you what is your best recollection as to whether you heard that there was to be a meeting of the employees in the plant before or after you left the plant on that day?

A. My best recollection is before.

Mr. Clark: That is, that he heard it before?

Trial Examiner Lindsay: Yes, before he had left the plant.

(Testimony of Louis T. Robinson.)

Q. (By Mr. Mouritsen) Now, Mr. Robinson, it is possible—I think you said that three employees who saw you earlier in the day told you that there was going to be a meeting of the employees in the plant that night, is that correct?

A. That is possible. I don't have a definite recollection on it.

Q. Well, as a matter of fact, Mr. Robinson, you knew that there was going to be a meeting of the non-Union men in the plant before you wrote Board's 24, didn't you?

A. That would certainly appear from the letter. I still don't have an exact recollection as to when I did know that. It was certainly prior to the time I wrote the letter, because the letter indicates it. [2480]

Q. And, as a matter of fact, then you knew that there was going to be a meeting of the non-Union men in the plant before 2:00 or 3:00 o'clock in the afternoon, isn't that correct?

A. That is my best recollection, although no definite statements had been made to me in that regard that I recall.

Q. Now, at the time when you saw the three men, Busby, Sitton and Lloyd, I will ask you if you didn't discuss with them the setting up of a Company Union? A. I did not.

Q. Now, I will ask you at that time whether you didn't discuss with them——

(Testimony of Louis T. Robinson.)

Mr. Clark (Interrupting): Now, just one minute, Mr. Examiner. The term "Company Union" has been bandied about here all through this hearing, and I would like it understood there is no legal significance to be attributed to Mr. Mouritsen's use of the term.

Mr. Mouritsen: I will call it an independent union from now on.

Mr. Clark: I would just as soon you call it a Company Union as it is a convenient way of designating it. As your Honor knows, there are certain things which flow from that definition, and I don't want to be held by those.

Trial Examiner Lindsay: I haven't so considered it that way, Mr. Clark.

Mr. Clark: Very well. With that understanding, we can continue to use the term. [2481]

Q. (By Mr. Mouritsen) I will ask you, Mr. Robinson, if at that meeting with Busby, Lloyd and Sitton, they didn't tell you that the Caminol Company and the Lucerne Creamery had handled the trouble, or a similar trouble in the same way.

A. My recollection is that they told me the District Attorney told them that.

Q. And it was—strike that.

Now, in your letter, Board's 24, you make the statement, Mr. Robinson, as follows: "I have suggested to some of the cooler heads that at the meeting tonight they appoint a committee to talk with the union men that were run off the job this morn-

(Testimony of Louis T. Robinson.)

ing and offer to allow them to come back and to work on some basis as might be agreed on at the meeting of the employees tonight.”

Did you follow me while I read that?

A. Yes, sir.

Q. That is correct as I read it, isn't it?

A. Yes, sir.

Q. I will ask you who were the cooler heads to whom you made that suggestion.

A. I just don't recall the exact parties that I made that suggestion to but I would rather think perhaps it was those three parties, I presume.

Q. That is your best recollection, is that correct?

A. That is my best recollection. [2482]

Mr. Clark: Mr. Examiner, may we take a recess? It is five minutes after 11:00.

Trial Examiner Lindsay: Yes.

(At this point a short recess was taken, after which proceedings were resumed as follows:)

Trial Examiner Lindsay: Hearing called to order. You may proceed.

Q. (By Mr. Mouritsen) Now, Mr. Robinson, I believe that you stated that although you didn't make a complete investigation of the matter of the incident of November 18, 1938, on that day you subsequently did make an investigation, is that correct?

A. I think I said, Mr. Mouritsen, I didn't make a special investigation that day and I never did myself go out to the plant and make a special in-

(Testimony of Louis T. Robinson.)

vestigation by talking to the different parties who participated in it. I gathered the information from different sources.

Q. Now, did you ever take any disciplinary actions against those men who had ejected the union men on that day?

Mr. Clark: Objected to upon the ground it is incompetent, irrelevant and immaterial and calls for a conclusion by this witness, Mr. Examiner, concerning facts which are to be passed upon by you, namely, as to whether or not the matters testified to by the union men themselves in this proceeding constitute an eviction. [2483]

In other words, we have the testimony in this case from the men themselves as to what happened to them and I haven't made this objection to the former questions asked Mr. Robinson because I understood that they were directed to his understanding at the time he wrote the letter of November 18th, so I didn't make this objection. Now the question just asked assumes that there was an eviction and I submit that calls for a conclusion of this witness.

Trial Examiner Lindsay: Well, just reframe your question.

Q. (By Mr. Mouritsen) I will ask you then, Mr. Robinson, did you ever take any disciplinary action against the men whom you described as having bodily thrown union men off the property?

Mr. Clark: I object to that as being incompe-

(Testimony of Louis T. Robinson.)

tent, irrelevant and immaterial and ask that that objection be deemed to run to this entire line of testimony.

Trial Examiner Lindsay: He may answer.

The Witness: Will you read the question?

(The record referred to was read by the reporter, as set forth above.)

The Witness: I didn't discharge anybody and I didn't deduct any salary from them, but we did register disapproval of that action.

Q. (By Mr. Mouritsen) How did you do that, Mr. Robinson? [2484]

A. By the action of the company, by talking to the men and by posting these notices to show that we didn't approve of that action.

Q. What notice did you post to show that you didn't approve of that action?

A. I have reference to Mr. Larson's notice.

Q. And who if anyone talked to the men about having bodily thrown union men off the property?

Mr. Clark: Now, just one other interruption, Mr. Examiner, which I would rather not make, but may the record show that the reference to the men being bodily thrown off the property in Mr. Mouritsen's questions and which are answered by this witness and therefore adopted by him in part comes from the statement by Mr. Robinson to that effect in the letter of November 18th, which I think is Board's Exhibit No. 24.

Trial Examiner Lindsay: That is correct.

(Testimony of Louis T. Robinson.)

Mr. Clark: Very well.

Mr. Mouritsen: The witness' own language.

Mr. Clark: It is in that letter.

Trial Examiner Lindsay: The letter speaks for itself. Proceed. We know it is in the letter.

Mr. Clark: That is all I wanted clear.

Trial Examiner Lindsay: The record so shows.

Now may I have the question, please? [2485]

(The record referred to was read by the reporter, as set forth above.)

The Witness: There was no assembly of the men called and no talk made to all of them at the same time.

Q. (By Mr. Mouritsen) Did you ever talk to any of the men about their actions on November 18, 1938, or any of them?

A. There was no special meeting called for that purpose.

Q. Did you talk to any single man regarding that incident on November 18, 1938?

A. I don't recall any particular conversation, but in talking with the men at times, I let it be known that I didn't approve of that action.

Q. Now, can you give us the name of a single man to whom you registered disapproval of their action on November 18, 1938?

A. I can't give you the name of a single man and tie it to a particular conversation, because I don't remember any specific conversation. [2486]

(Testimony of Louis T. Robinson.)

Q. Now, did Mr. Gordon Hammond ever tell you that he had talked to any of the men about their having bodily thrown Union men from the plant on November 18th, 1938?

A. Will you read that?

(The record referred to was read by the reporter, as set forth above.)

Mr. Clark: I object to that upon the ground it is complex, and calls for testimony which should be elicited from Mr. Hammond, and it also involves a conclusion which is not supported by the record, Mr. Examiner, namely, that anyone was bodily thrown from the premises. This record does not show that.

Trial Examiner Lindsay: I understand he is only using that as a term used in the letter by this witness himself. I fully understand, and I am sure the record fully describes the situation.

Now, may we have the question again? I am sorry, Mr. Reporter.

(The record referred to was read by the reporter, as set forth above.)

The Witness: Mr. Hammond made his report to me, and he told me information that I had already learned from other sources of the events, had not been as bad as I thought they were at the time I wrote that letter, and we agreed that we would do everything we could do to discourage anything of that kind and [2487] to promote peace among all the employees.

(Testimony of Louis T. Robinson.)

Mr. Mouritsen: You still haven't answered my question, Mr. Robinson.

Q. Did Mr. Hammond ever tell you that he had talked to any of these men about the incident of November 18th, 1938?

A. I don't recall——

Mr. Clark (Interrupting): Let me have that, please? May I have it re-read, please?

Trial Examiner Lindsay: Yes. It is the same question. Read it, please.

The record referred to was read by the reporter, as set forth above.)

The Witness: I don't recall any specific conversation by Mr. Hammond in that regard.

Q. (By Mr. Mouritsen): Now, other than the events that you have described, was any further disciplinary action taken with reference to the men who, as you say, bodily threw the Union men from the plant on November 18th, 1938?

My reference, of course, is to Board's 24, which the witness himself wrote.

Mr. Clark: Mr. Examiner, I am going to object to this manner of examining this witness, or bootlegging into the record continuously a statement that men were bodily thrown out of the plant, when that is not supported by the testimony of the very men themselves. The record in this case, and the testimony [2488] of the men who left the plant on that day show that Mr. Robinson was mistaken in his letter of November 18th, and it seems to

(Testimony of Louis T. Robinson.)

me that subject has been exhausted, and I think it is an improper method of examining this witness to continually use that phrase.

Trial Examiner Lindsay: Well, just change your phrase, Mr. Mouritsen.

As I understand it, he was just repeating what the witness himself stated in the letter.

Q. (By Mr. Mouritsen): Well, I will ask you then, Mr. Robinson, was any further disciplinary action ever taken with reference to the non-union men for their actions on November 18th, 1938 with reference to the Union men?

A. Not that I recall.

Q. Do you recall when, on November 18th, 1938, you received Board's Exhibit 25, I believe—that is the inter-office memoranda from Mr. Hammond to yourself?

A. No, I don't. My recollection is that I saw a long hand report by Mr. Hammond before that was typed up by one of the stenographers.

Q. Can you recall the time of day when you saw the long hand report from which Board's 25 was typed?

A. No, I don't believe I can.

Q. Was that in the morning or in the afternoon?

A. I don't recall that. [2489]

Q. Did Mr. Gordon Hammond return to the plant on November 18th, 1938, before you left for the day?

A. No, he did not.

Q. Mr. Gordon Hammond is in charge of the plant, I believe you said, is that correct?

(Testimony of Louis T. Robinson.)

A. That is correct.

Q. And how long has he been in charge? I believe you stated that before, but I have forgotten.

A. He has been in charge for fourteen years.

Q. I will ask you if Mr. Gordon Hammond, on a number of occasions during 1938, absented himself from the plant?

A. It is very customary for Mr. Hammond to absent himself from the plant, but usually on business. This particular occasion was not on business.

Mr. Clark: May I have it indicated, Mr. Examiner, what this particular occasion refers to?

Trial Examiner Lindsay: I am sure we all refer to the 18th of November, 1938.

Mr. Clark: Very well.

Trial Examiner Lindsay: Is that right, Mr. Witness?

The Witness: That is correct.

Q. (By Mr. Mouritsen): Mr. Robinson, I will ask you if it is the usual practice for the Company to send Registered letters to their employees informing them that they are laid off?

A. No, it is not. [2490]

Q. Is it the usual practice to send Registered letters to employees informing them that their employment is terminated?

A. No, it is not.

Mr. Mouritsen: I think that is all.

Redirect Examination

Q. (By Mr. Clark): Do you know why it was

(Testimony of Louis T. Robinson.)

that Gordon Hammond was absent from the plant on November 18th of last year?

A. Yes, I do.

Q. Please state why that was?

A. Mr. Hammond told me before he left the plant that some of his people, I think his mother, was ill, and that he wanted to take her to Los Angeles and put her on the train at Los Angeles.

Q. I see.

Will you tell us why it was that the Registered letters marked Boswell's Exhibits 14 to 20 inclusive, in this case, were sent on or about the dates they bear to Mr. George Andrade, Mr. L. E. Ely, Mr. E. C. Powell, Mr. R. K. Martin, Mr. H. N. Wingo, Mr. L. A. Spear and Mr. O. L. Farr?

A. These men were being paid for work they were not actually performing, and they were not available at the plant to tell them that their employment was being terminated, so we thought it wise to mail them letters so there would be no misunderstanding about the amount of pay they might have coming.

Q. All right.

Why were the letters registered, if you know? [2491]

A. To be positive that they had been received by those parties.

Q. Yes.

In the usual case, am I correct in stating that when a particular job has run out, that the employee is notified right at the plant?

(Testimony of Louis T. Robinson.)

A. That is correct.

Q. In other words, he is there working at the time, isn't he? A. Yes, sir.

Q. Now, will you please tell me whether there is any set program or schedule at the Corcoran plant of the J. G. Boswell Company for the operations of the oil mill?

A. No, there is no set program. We operate the oil mill according to the amount of seed that we have and the market conditions as we judge them to be. [2492]

Q. All right.

And are there any other factors which enter into a decision on the part of the company to operate the mill at any given time?

A. No major factors that I know of.

Q. Well, suppose some of the seed in storage should become what is known as "hot."

A. Absolutely, regardless of market conditions the oil mill would be started up to run out those hot seed or else we would lose all the seed.

Q. I see.

What do you mean by "hot seed"?

A. Hot seed—if the seed contains more than about 8 per cent moisture when it is put in storage they ordinarily will heat up, the same thing as baling wet hay. It is kind of a combustion condition that occurs from the moisture in the seed.

Q. I see.

And when any of the seed in storage becomes hot,

(Testimony of Louis T. Robinson.)

is it then necessary to run the oil mill for a time sufficient to mill that particular amount of seed?

A. Yes. If you do not mill that particular amount of seed, they will turn to carbon.

Q. I can't hear.

A. If you don't mill that particular lot of seed, they will [2493] turn to carbon.

Q. I see.

Now, in addition to market conditions and the situation you have just described, are there any other factors which enter into any determination by the company to run the oil mill at any given period?

A. None that I know of. That determination, of course, is principally made at the head office.

Q. I see.

Well, how about furnishing feed for cattle?

A. That is important. We run a big cattle yard there. The purpose of it, one of the main purposes is to furnish an outlet for the cottonseed cake which is a by-product of the cottonseed, and it is important that we keep feed for cattle there all the time. We would naturally go quite a long ways to get our own feed rather than go out in the open market and buy someone else's.

Q. I see.

So am I correct in stating that on some occasions the mill would run for a day or so to furnish feed when it becomes necessary to do it?

A. That is correct.

(Testimony of Louis T. Robinson.)

Q. There is no set program for operating that mill, is that true?

Mr. Mouritsen: Objected to as already asked and answered. [2494]

Mr. Clark: Withdraw it.

Trial Examiner Lindsay: Sustained.

Mr. Clark: All right.

Q. Now, with respect to the document which has been marked Board's Exhibit 11, or rather—I think Board's Exhibit 11—no, I am wrong, Boswell's, Respondent Boswell's Exhibit 13, which is the notice to employees concerning which Mr. Mouritsen examined you on your cross examination, I will ask you, Mr. Robinson, whether or not Mr. Larson approved that notice before it was posted.

A. He did.

Q. Did he agree to the change which was made in it and which you testified to on your cross examination?

A. He did.

Q. Did he accept that?

A. He did.

Q. At the time Mr. Larson called on you in your office, did he represent himself to be an authorized representative of the National Labor Relations Board?

A. Yes, sir.

Q. Was the posting of that notice pursuant to any suggestion or instruction by Mr. Larson?

A. It was pursuant to Mr. Larson's request.

Q. All right.

And will you please state whether or not the notice was [2495] in fact posted?

A. It was.

(Testimony of Louis T. Robinson.)

Q. Am I correct in stating it was left published or posted for a period of fifteen days?

A. In excess of fifteen days.

Q. Did Mr. Larson approve the place where the notice was in fact posted? A. He did.

Mr. Clark: That is all.

Recross Examination

Q. (By Mr. Mouritsen): Did Mr. Larson ever see the notice posted?

Mr. Clark: Objected to upon the ground it is incompetent, irrelevant and immaterial; did he see the notice posted.

Trial Examiner Lindsay: Sustained.

Q. (By Mr. Mouritsen): Well, I will ask you, Mr. Robinson, if you have been out to the machine shop since you were last on the stand?

A. Was that yesterday?

Q. The last time prior to yesterday.

A. I don't recall having been out there.

Mr. Clark: Suppose you direct the witness' attention to the testimony he gave in that respect on the other occasion, I think at least a week ago or ten days ago. [2496]

Q. (By Mr. Mouritsen): Well, I will ask you if you have refreshed your recollection or made any examination to ascertain whether or not there is a bulletin board in the machine shop of the Boswell plant. A. I have not.

Q. And your recollection still is that there is no board in the machine shop on which notices are posted, is that correct?

(Testimony of Louis T. Robinson.)

A. My recollection is that I have never seen one there.

Q. And didn't Mr. Larson at the time when he requested you to post Board's 13 request that you post it on all bulletin board's in the plant?

A. He did not.

Trial Examiner Lindsay: That is Boswell's 13, isn't it?

Mr. Clark: Boswell's 13.

Q. (By Mr. Mouritsen): You so understood I was referring to the notice?

A. That is what my answer is on.

Q. Did you tell Mr. Larson that there was only one bulletin board in the plant?

A. I don't recall telling him that.

Q. Do you recall his asking you whether there was more than one bulletin board in the plant?

A. No, I don't.

Mr. Mouritsen: I think that is all. [2497]

Mr. Clark: No further questions from us, Mr. Examiner.

Trial Examiner Lindsay: That is all.

(Witness excused.)

Mr. Clark: Is Mr. William Boswell in the audience?

Trial Examiner Lindsay: It is so close to noon——

Mr. Clark (Interrupting): He is a very short witness and I would like to get rid of him if I could.

May the record show that Mr. W. W. Boswell is called as a witness on the Associated Farmers' case, Mr. Boswell being the one witness I mentioned yesterday, which was being reserved in the submission of that case.

Trial Examiner Lindsay: All right.

WILLIAM W. BOSWELL

called as a witness by and on behalf of the Associated Farmers of Kings County, Inc., having been first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Clark): Will you state your name, Mr. Boswell? A. William W. Boswell.

Q. And where do you live, please?

A. Corcoran.

Q. What is your occupation?

A. Oh, I handle the cattle and meal and cake for the Boswell Company. [2498]

Q. And by the "Boswell Company" do you mean the J. G. Boswell Company, the respondent in this proceeding? A. Yes.

Q. For how long have you held that position?

A. Fifteen years.

Q. Now, directing your attention to the afternoon of a week ago Friday which I believe was June 2nd of this year, and particularly to the time his Honor took a recess in this proceeding during the middle of the afternoon, I will ask you to tell us whether or not you were here in the court room.

(Testimony of William W. Boswell.)

A. Yes, I was present. [2499]

Q. All right.

Now, do you remember that Mr. E. C. Salyer had been testifying in the proceeding just prior to the recess? A. I do.

Q. Immediately upon the recess having been ordered or declared, where did you go?

A. I went out front (indicating).

Q. Now, at that time, Mr. Boswell, were you present at any conversation between yourself, Mr. Lloyd Liggett, Mr. Forrest Riley, Mr. E. C. Salyer, Mr. Painter of my office and myself?

A. I was not.

Q. During that recess at any time, did you hear Mr. E. C. Salyer state in substance or effect the following: "I really got them told, didn't I?"

A. I did not.

Q. Will you please tell us whether or not at any time during that recess and at the time and place just indicated, you heard Mr. E. C. Salyer state in substance or effect, "We all tell the same story, and the case will have to go just as we tell it?"

A. I did not.

Q. Will you please tell us whether or not at any time during that recess and at the time and place just indicated, you heard Mr. Lloyd Liggett state in substance or effect: "I am going to get up and tell the same story that you guys told, and get [2500] plenty tough with them?"

A. I did not.

(Testimony of William W. Boswell.)

Q. All right.

Now, during that recess on Friday afternoon, June 2nd, Mr. Boswell, did you have a conversation with me? A. I did.

Q. Will you please tell the Examiner all that you remember of that conversation, and who was present?

A. I noticed you walking up in front, and you walked over where we were, Mr. Hanson and my son had some conversation.

Q. What Mr. Hanson was that?

A. Jesse Hanson.

You came over, and I introduced you to Billy, who is my son, and during the conversation with you, I asked you would you come to lunch the next day, and you said, depending upon how long court lasted, and you would like to catch the 11:00 o'clock train if you could; if you felt good the next morning and missed the train, you would certainly be glad to come.

You said, "Do you mean that for my friend, Mr. Painter, too?"

And I said, "Absolutely."

And you walked away, and that is all the conversation I had.

Q. Did you see Mr. E. C. Salyer come up to me at that time? A. I did not. [2501]

Mr. Clark: That is all.

You may cross examine.

(Testimony of W. Boswell.)

Mr. Mouritsen: No cross examination.

Mr. Clark: One further question.

Did you happen to see Mr. Walter Winslow standing near us at that time?

The Witness: He was not.

Mr. Clark: That is all.

(Witness excused.)

Mr. Clark: Now, does your Honor wish to take a recess at this time?

Trial Examiner Lindsay: Yes, until 2:00 o'clock.

(Thereupon, at 11:55 o'clock a. m., a recess was taken until 2:00 o'clock p. m. of the same date.) [2502]

2

United States
Circuit Court of Appeals
For the Ninth Circuit.

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

J. G. BOSWELL COMPANY and CORCORAN
TELEPHONE EXCHANGE,
Respondents.

Transcript of Record

In Seven Volumes

VOLUME VII

Pages 2945 to 3343

FILED

SEP 15 1942

PAUL P. O'BRIEN,

CLERK

Upon Petition for Enforcement of An Order of the
National Labor Relations Board

No. 10148

United States
Circuit Court of Appeals
For the Ninth Circuit.

NATIONAL LABOR RELATIONS BOARD,
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Upon Petition for Enforcement of An Order of the
National Labor Relations Board

After Recess

(Whereupon, the hearing in the above-entitled matter was resumed, pursuant to recess, at 2:00 o'clock p. m.)

Trial Examiner Lindsay: Hearing called to order.

The Reporter informs me that he did have the word "him" instead of "them."

Mr. Clark: Yes. I understand that, Mr. Lindsay, and so far as I am concerned that ends the matter. If I want to add anything to it, I will recall Mr. Botts.

However, in finishing my reading of yesterday's transcript during the noon hour, I ran across one other thing that I think might as well be corrected. That is at the top of page 2405.

There appears there this statement by me: "I want to point out this is a statement made to him—" referring to Mr. Louis Robinson—"by Mr. Prior with reference to the company facing an apparent unemployment situation," and it should read, as an examination of the transcript will show, "I want to point out this is a statement made by him to Mr. Prior with reference to the company facing an apparent unemployment situation."

It referred to Mr. Louie Robinson's—

Trial Examiner Lindsay (Interrupting): Yes, that is right. I remember that.

Mr. Clark (Continuing): —narrative of the conversa- [2503] tion.

May that change be made, Mr. Mouritsen?

Mr. Mouritsen: Yes.

Mr. Clark: In other words, the statement will now read, at line 1, page 2405, as follows: "I want to point out this is a statement made by him to Mr. prior with reference to the company facing an apparent unemployment situation."

Mr. Mouritsen: So stipulated.

Mr. Clark: Very well.

Now at this time, Mr. Examiner, we will offer in evidence on behalf of all respondents, a certified copy of the preliminary examination in the matter of the people of the State of California versus E. C. Powell, No. 1465, in the City Court of the City of Corcoran, County of Kings, State of California, had on February 18, 1938, before the Honorable W. I. Nonhof, Judge of the City Court, which document includes, in addition to the other matters which occurred at that time the complete testimony of B. H. Carden, the complete testimony of R. A. Springer, the complete testimony of E. C. Powell, and which is certified to by Mr. E. F. Pickerell, County Clerk and Ex Officio Clerk of the Superior Court of the County of Kings, this state, under date of June 2, 1939.

I would like to offer this in evidence as Boswell's next in order, to keep it in shape.

Mr. Mouritsen: No objection. [2504]

Trial Examiner Lindsay: Respondent Boswell's Exhibit 21 received.

(Thereupon the document above referred to was received in evidence and marked Respondent Boswell's Exhibit No. 21.)

BOSWELL'S EXHIBIT No. 21

In the City Court of the City of Corcoran, County of Kings, State of California

No. 1465

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

vs.

E. C. POWELL,

Defendant.

— PRELIMINARY EXAMINATION —

I n d e x

Complaint	2.
B. H. Carden	4.
R. E. Springer	9.
E. C. Powell	11.
Committing Order	14.
Reporter's Certificate	15.

Corcoran, California, February 18, 1938. 2 p. m.

Be It Remembered: That the above entitled matter came on regularly for hearing, in the above entitled court, on the above mentioned date, before

Boswell's Exhibit No. 21—(Cont.)

the Honorable W. I. Nonhof, Judge of the City Court.

That the People of the State of California were represented by the District Attorney of Kings County, Roger R. Walch, Esq.

That the defendant was present in court, not represented by counsel.

That M. Laurence Short, a shorthand writer, was appointed and sworn to act as Official Phonographic Reporter in the hearing of said matter.

That thereafter, the following proceedings were had and testimony given, to wit:

The Court: You are ready to proceed, are you?

The Defendant: Yes, sir.

The Court: I will read this complaint to you:
(Reading:)

"In the City Court of the City of Corcoran, County of Kings, State of California.

"The People of the State of California, plaintiff, vs. E. C. Powell, defendant. Complaint—Criminal.

"B. H. Carden of the City of Corcoran in the County of Kings, State of California, being first duly sworn, makes complaint and deposes and says, that in the City of Corcoran, County of Kings, State of California, on or about the 17th day of January, 1938, and before the filing of this complaint, the crime of felony, violation of Section 476a of the Penal Code was committed by E. C. Powell, as follows, to wit:

"The said E. C. Powell at the time aforesaid, and

Boswell's Exhibit No. 21—(Cont.)

within the City of Corcoran in the County of Kings and State aforesaid with intent then and there to cheat and defraud B. H. Carden and Farmers and Merchants Bank of Summerville, Georgia, a corporation, did willfully, unlawfully, fraudulently and feloniously make, draw, utter and deliver to the said B. H. Carden, a check and draft for the payment of money in the sum of Fifteen Dollars (\$15.00), drawn upon a bank, to wit, Farmers and Merchants Bank of Summerville, Georgia, a corporation, knowing at the time of such making, drawing, uttering and delivering that he had not sufficient funds in, or credit with, said bank to meet the said check and draft in full upon its presentation for payment, all of which is contrary to the statute in such cases made and provided, and against the peace and dignity of the people of the State of California.

“Said complainant therefore prays that a warrant may be issued for the arrest of said E. C. Powell and that he may be dealt with according to law.

B. H. Carden

“Subscribed and sworn to before me, this 10th day of February, 1938. W. I. Nonhof, Judge of the City Court of the City of Corcoran, State of California.”

I will inform you of your legal rights. You are entitled to a speedy and public trial, to be represented by counsel at all stages of the proceedings, to produce witnesses on your behalf and to be confronted by the witnesses against you in the presence

Boswell's Exhibit No. 21—(Cont.)

of the Court. You are entitled to bail and to a preliminary examination. You cannot plead in this court unless you are accompanied by your attorney; if, however, you are accompanied by your attorney you may, with the consent of the District Attorney and the magistrate, plead guilty to the charge at this time. Unless you plead guilty to the charge in this court it will be necessary for you to have your preliminary examination in this court and if the court finds that a public offense has been committed and there is sufficient cause to believe you guilty thereof you will be held to answer to the Superior Court. This court cannot appoint an attorney to represent you. In the Superior Court, if you desire the services of an attorney and are unable to employ one the court will appoint an attorney to represent you.

The defendant stated that he was ready to proceed with the case so we proceeded with it.

Mr. Walch: All right. You're ready to go right ahead with the preliminary examination now, are you, Mr. Powell? Is that the name?

Defendant Powell: Yes, sir.

Mr. Walch: You understand from what the court has told you what a preliminary examination is?

The Defendant: Yes.

Mr. Walch: It's a procedure that has to be followed. And you are ready to proceed with that now? Is that right?

The Defendant: Yes, sir.

Mr. Walch: Call Mr. B. H. Carden.

Boswell's Exhibit No. 21—(Cont.)

B. H. CARDEN

— called, sworn and examined as a witness,
testified as follows:

Direct Examination

Mr. Walch: Q. Your name is B. H. Carden?

A. Yes, sir.

Q. And you live here in Corcoran?

A. Yes, sir, I do.

Q. You are engaged in business in the City of
Corcoran? A. I am.

Q. And that business consists of a lunch room?

A. Yes, sir.

Q. And at that same place you sell liquors and
smoking paraphernalia, and so on?

A. Bar room.

Q. Are you acquainted with the defendant in
this action, E. C. Powell? A. I am.

Q. How long have you known him?

A. Oh, perhaps a year or a little longer.

Q. He trades with you, does he, in your place
of business? A. Yes, sir.

Q. Has he traded with you for sometime?

A. Yes, ever since we owned the business, first
of July.

Q. And have you ever received any checks from
this man prior to the one here in question?

A. I have.

Q. And had no trouble with them?

A. Well, he always came and took them up the

Boswell's Exhibit No. 21—(Cont.)

next day or a day or two after. I don't think he had any account. He always came and took the checks up. I never cashed one.

Q. You never have sent any back for presentation?

A. Well, from the bank here, he has.

Q. Oh, he has given you checks on the local bank of Corcoran?

A. Yes, and would come in the next day and take them up with cash.

Q. I see. Now, I will show you what purports to be a check which reads as follows: "Somerville, Georgia." Georgia being abbreviated, "January 17, 1938. Farmers and Merchants Bank. Pay to B. H. Carden or bearer, \$15.00." Down in the lefthand corner: "Counter check" marked out and in its place put "Farmers and Merchants Bank," abbreviated, "Summerville, Georgia," Georgia abbreviated. Signed "E. C. Powell," and ask you if you recognize that instrument. (Handing check to the witness.) A. Yes, sir. I cashed that.

Q. On the 17th day of January?

A. On or about that time, I think.

Q. Now, this has " '28." Should that be " '38", or——

A. Why, it should be '38, yes. I never noticed it being that.

Q. Was this check made out and delivered to you by the defendant, E. C. Powell?

Boswell's Exhibit No. 21—(Cont.)

A. Made it out right on the bar and where I cashed it.

Q. At your place of business?

A. At my place of business.

Q. And what did you give him for it?

A. \$15.00.

Q. In cash?

A. Three five dollar bills.

Q. I see. You don't know, I presume, what he used this money for? A. I think I do.

Q. What? A. Playing poker.

Q. He went back and played poker. In your place of business? A. Uh-huh.

Q. At the time he cashed it he hadn't lost that in a game, had he? A. How's that?

Q. At the time he cashed this check he hadn't lost this money in a game there, had he?

A. I couldn't tell you. He came up and asked me to cash another check. I had cashed one for sixty. A few days before that he brought it in there, made out on the same bank, with Mr. Hammond's signature on it and he asked me if I would cash it with his signature and I told him I would, we looked at it and recognized the signature so I cashed it.

Q. What happened to that?

A. It came back and Mr. Hammond made it good.

Q. I see. Now, this \$15.00 check——

A. It came back a few days later.

Boswell's Exhibit No. 21—(Cont.)

Q. I see. It was sent in for collection, came back?

A. It came back, and while it was gone in for collection Mr. Powell disappeared.

Q. You mean from the City of Corcoran?

A. From the City of Corcoran.

Q. And do you know where or how he was located?

A. I do not. I know I heard where but I don't know how.

Q. I see. Have you had any conversation with Mr. Powell concerning this check?

A. I did.

Q. What was that?

A. Well, I cashed that \$15.00 check and he went back in the card room and I told my son and the bartender, "If he comes up for any more personal checks to be cashed don't cash any more, because I think that one will come back." I says, "I cashed it on the strength of Hammond endorsing the \$60.00 one and he being from the same country, but I think it will come back." So it wasn't but a little while he came back and wanted me to cash another check and I said, "No, I have told the boys, we won't cash another personal check for you." I says, "We'll wait and see what these we have already cashed do."

Q. Now, at the time he gave you this check did he say to hold it?

A. No, he said it was good. He said that check

Boswell's Exhibit No. 21—(Cont.)

Hammond endorsed was good or he wouldn't have endorsed it, and this one is all right, so I cashed it. Then I made up my mind I wouldn't cash any more and I didn't.

Q. Have you talked with him any more since then?

A. I have not, not about checks. He was in a few times after that.

Q. I see. Now, this check was given to you, delivered to you in your place of business in the City of Corcoran.

A. It was.

Q. In the County of Kings, State of California?

A. It was.

Mr. Walch: I think that's all. Do you wish to ask him any questions?

The Defendant: No, sir.

The Court: No questions you would like to ask?

The Defendant: No.

Mr. Walch: That's all. Call Mr. Springer.

R. E. SPRINGER

called, sworn and examined as a witness, testified as follows:

Direct Examination

Mr. Walch: Q. Your full name, Bob?

A. R. E. Springer.

Q. And you're chief of Police of the City of Corcoran?

A. Yes, sir.

Q. Are you acquainted with the defendant in this action?

A. Yes, sir.

Boswell's Exhibit No. 21—(Cont.)

Q. How long have you known him?

A. About a year and a half.

Q. Has he worked in and about Corcoran for that period of time?

A. Yes, sir, he's worked for the Boswell Company.

Q. I see. Now, did you have occasion to take this man into custody upon this charge?

A. Yes, sir.

Q. Do you know where he was arrested under this warrant?

A. Yes, sir.

Q. Where?

A. San Bernardino, California.

Q. And your men went down and brought him back?

A. Yes, sir, Constable Dyer.

Q. Now, have you had any discussion with the defendant at all concerning the giving of this check or these checks?

A. Yes, sir, there was some discussion.

Q. Well, did he state as to whether or not—anything relative to the fact that at the time he gave these checks he did have an account at this Farmers and Merchants Bank back in Georgia, or that there was plenty of money in the bank to take care of them, any statements at all relating to that phase of the case?

A. He stated that he wanted to make the checks good, requested that he be given the opportunity to pay off the checks, and at the time they were issued

Boswell's Exhibit No. 21—(Cont.)

he had in mind of getting work when he could and making them good later on.

Q. I see. Substantially, that's all the conversation concerning that particular point?

A. Yes, that's about all with regard to the checks.

Mr. Walch: That's all. Any questions?

The Court: Any questions?

The Defendant: No.

Mr. Walch: No further witnesses for the prosecution.

The Court: Now, Mr. Powell, you have the right to give evidence in your own behalf if you desire; however, whatever testimony you may give may be used against you later on in the Superior Court by the District Attorney. Did you wish to testify at this time? Did you understand me all right?

The Defendant: Yes, sir, I understood.

The Court: Did you wish to testify at this time?

The Defendant: Well—(Defendant getting up and going to the witness stand)

Mr. Walch: Raise your right hand.

The Court: Just stand up, please.

E. C. POWELL

called, sworn and examined as a witness, testified as follows:

Direct Examination

Mr. Walch: Q. Your name is E. C. Powell?

A. Yes, sir.

Boswell's Exhibit No. 21—(Cont.)

Q. Where do you live, Mr. Powell?

A. I lived here about a year and a half.

Q. I see. Are you married?

A. Yes, sir.

Q. Where is your family?

A. Down in San Bernardino.

Q. Of what does your family consist?

A. Wife and two children.

Q. How old are the children?

A. Five and three.

Q. I see. When did you go to San Bernardino from Corcoran?

A. I went to San Bernardino from Los Angeles.

Q. Well, when did you leave Corcoran?

A. About six or eight weeks ago, or possibly two months. About six or eight weeks ago, I'd say, something in that neighborhood.

Q. Now, you know what the charge is?

A. Yes, sir.

Q. You received a copy of the complaint?

A. Yes, sir.

Q. You know Mr. Carden—you have heard his testimony, that on the 17th of January of this year you did cash a \$15.00 check on the Farmers and Merchants Bank of Summerville Georgia?

A. Yes, sir.

Q. And that he gave you three five dollar bills for that check? Now, is there anything about that transaction or concerning this check that you want to tell us?

Boswell's Exhibit No. 21—(Cont.)

A. I just would like to make a statement.

Q. All right, go ahead, make a statement in your own words.

A. I gave the checks with no intention of beating them, but intended to make them good as I have made others, and I had no intention of beating them. When I could find employment to make them good I intended to do it, and I hadn't been hid out or anything. I was under my same name and have given references here of employment of various nature.

Q. Now, let me ask you: When you gave this check you knew that you didn't have the money in that bank, didn't you?

A. I figured on making the checks good.

Q. That isn't what I mean. At the time you gave the check you knew you didn't have the money in that bank but you intended——

A. To meet it.

Q. ——to go out and get some money and take it up. Is that right?

A. I intended to meet it there from money that was owed me and promised me.

Q. Where was this money owed to you?

A. Back in the East, in Georgia.

Q. I see. But it wasn't in the bank at that time——

A. No, sir.

Q. Did you actually have an account back there or wasn't there just—or, didn't you have any account at all?

Boswell's Exhibit No. 21—(Cont.)

A. No, I didn't have any account at the time.

Q. The same thing is true of that sixty dollar check that Mr. Hammond put his name on?

A. His name, you say?

Q. I say, is that true of the Sixty dollar check, too, that was cashed by Mr. Carden on account of Mr. Hammond's—

A. Yes, sir, Mr. Hammond endorsed it.

Q. —indorsing it. Have you got any other checks at this time outstanding, do you know?

A. No, sir, none.

Q. None? A. None.

Q. Have you ever had a checking account at the local bank here in Corcoran? A. No, sir.

Mr. Walch: That's all. Anything else you want to say? A. No.

The Court: No other statements you would like to give on your behalf? A. No, sir.

Q. And you have no witnesses at this time to testify, have you? A. No, sir.

The Court: Anything further, Mr. Walch?

Mr. Walch: That's all. I ask he be held to answer. I'm not going to introduce the check at this time, your Honor.

The Court: It is the order of the court that the defendant be held to answer to the Superior Court.

In the City Court of the City of Corcoran, County of Kings, State of California. The People of the State of California, plaintiff, vs. E. C. Powell, defendant. It appearing to me that the offense of

Boswell's Exhibit No. 21—(Cont.)

felony, violation of Section 476a of the Penal Code of the State of California has been committed, and that there is sufficient cause to believe the within named E. C. Powell guilty, thereof, I order that he be held to answer to the same, and he is hereby committed to the sheriff of the County of Kings, and that he be admitted to bail in the sum of One Thousand and no/100 dollars, and be committed to the sheriff of the County of Kings until he gives such bail. Dated, February 18, 1938. W. I. Nonhof, Judge of the City Court.

I, M. Laurence Short, do hereby certify: That I am the Official Phonographic Reporter of the Superior Court of the State of California, in and for the County of Kings; that I was appointed and sworn to act as Official Phonographic Reporter in the hearing of the matter entitled as upon the first page hereof; that I reported in shorthand writing the proceedings had and testimony given in the hearing of said matter, that I thereafter caused the same to be reduced to typewriting under my supervision; that the foregoing and annexed pages, numbered from One to Fourteen, both inclusive, contain a full, true and correct statement of the proceedings had and testimony given in the hearing of said matter, and a full, true and complete transcript of my shorthand notes taken in the hearing thereof.

Dated: Feb. 24, 1938

M. LAURENCE SHORT
Official Reporter

Boswell's Exhibit No. 21—(Cont.)

State of California,
County of Kings—ss.

I, E. F. Pickerill, County Clerk, and ex-officio Clerk of the Superior Court in and for said County and State, do hereby certify the foregoing to be a full, true and correct copy of the original thereof on file in my office.

Witness my hand and Seal of said Superior Court, this 2nd day of June, 1939. E. F. Pickerill, County Clerk and Ex-Officio Clerk, of said Superior Court.

[Seal] By GEO. A. BECK
Deputy Clerk.

[Endorsed]: Filed 6/13/39.

Mr. Clark: Mr. Gordon Hammond, please.

GORDON L. HAMMOND,

called as a witness by and on behalf of the J. G. Boswell Company, having been first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Clark) Will you please state your name, Mr. Hammond.

A. Gordon L. Hammond.

Trial Examiner Lindsay: You will have to speak louder.

The Witness: Gordon L. Hammond.

(Testimony of Gordon L. Hammond.)

Q. (By Mr. Clark) Now will you please speak up, keep your voice up, so we can all hear, Mr. Hammond, because these fans interfere.

Where do you live, Mr. Hammond?

A. I live in Corcoran, the south edge of Corcoran. [2505]

Q. And what is your occupation, please?

A. Superintendent of the Boswell—the J. G. Boswell Company plant.

Q. And by the J. G. Boswell Company, do you refer to the Company which is one of the Respondents in this proceeding? A. Yes, I do.

Q. For how long have you been superintendent of the J. G. Boswell Company plant?

A. Fourteen years, a little over.

Q. And is that the plant here in Corcoran, Mr. Hammond? A. Yes, sir.

Trial Examiner Lindsay: You will have to talk a little louder.

Q. (By Mr. Clark) Now, you know Mr. Louie Robinson, of course, Mr. Hammond?

A. Yes, sir.

Q. And am I correct in stating that Mr. Louie Robinson is the general manager of the plant?

A. That is correct.

Q. And for how long, to your knowledge, has Mr. Robinson held that position?

A. Fourteen years.

Q. The same length of time as you have, is that right? A. That is right.

(Testimony of Gordon L. Hammond.)

Q. As you have held your position? [2506]

A. Yes, sir.

Q. Now, I want to show you some cards which have been marked Respondent Boswell's Exhibits 9-A, 9-B, 9-C and 9-D in this proceeding, each of which have on them the name "L. E. Ely."

Will you tell us, please, what those cards are?

A. (Examining documents) They are weekly time cards as made up for—we make the payroll up for each week.

Q. Well, are those the weekly time cards for Mr. L. E. Ely? A. That is right.

Q. All right.

Now, directing your attention, Mr. Hammond, to the card which is marked Respondent Boswell's Exhibit 9-A in the name of L. E. Ely, I will ask you whose initials are those which appear in the lower right-hand corner, namely the initials G. L. H., and after which is printed the word "Foreman?" A. That is mine.

Q. Those are yours? A. Yes, sir.

Q. Will you please speak up a little louder?

A. Yes.

Q. All right.

And will you please tell me in whose handwriting the balance of the card is? A. That is mine.

Q. Now, and that is true of the entire card, is it? [2507] A. That is right.

Mr. Mouritsen: Referring to which one?

Mr. Clark: Just 9-A now, Mr. Mouritsen.

(Testimony of Gordon L. Hammond.)

Q. Now, will you also tell us, Mr. Hammond, whether—withdraw that.

Directing your attention to the vertical columns which appear on this card, first, under the letter “S”, will you tell us what “S” means?

A. That is Saturday.

Q. That is Saturday? A. Yes.

Q. And how about the next column under the letter “S”? A. Sunday. [2508]

Q. And the next one under the letter “M”?

A. Monday.

Q. And then to the other columns headed by the letters “T,” “W,” “T,” and “F.” Monday, Tuesday, Wednesday, Thursday, and Friday, is that right? A. Yes.

Q. Now, directing your attention to the cross which appears under the first column headed with an S, will you tell us what that cross indicates?

A. No work that day.

Q. All right.

And was that cross made there by you?

A. It was.

Q. And when was it made there with respect to the Saturday indicated on this card?

A. That evening.

Q. The evening of the same day?

A. That is right.

Q. And is that true of all of the entries under these columns headed by symbols indicating the day of the week, namely, that you place the information there at the end of the work day?

(Testimony of Gordon L. Hammond.)

A. That is correct.

Q. All right.

Now, do you get that information, Mr. Hammond, of your [2509] own knowledge concerning employees? A. I do.

Q. All right.

Now, are the same facts true of all of these cards that I have directed your attention to with respect to the manner in which you keep them and what the symbols mean? A. It is.

Q. All right.

Now, is the card, then, marked Respondent Boswell's 9(a) the card for L. E. Ely for the work week ending Thursday, October 27, 1938?

A. It is.

Q. And am I correct in stating that your week ends, the work week ends, at the Boswell plant at Corcoran on Thursday of each week?

A. It does.

Q. So that the figures "October 27, 1938," indicate a Thursday, is that right?

A. That is right.

Q. Now, with respect to this particular card, I want to indicate—I want to direct your attention, rather, to the figure 12 which appears under the column headed with an M which you have told us is Monday, and first, am I correct in stating that this is the Monday preceding October 27th?

A. Yes, sir. [2510]

Q. All right.

(Testimony of Gordon L. Hammond.)

Q. What does the 12 indicate?

A. 12 hours of work.

Q. And can you tell us whether that was the first work done by Mr. Ely during the week ending October 27th?

A. It was.

Q. And——

Mr. Mouritsen (Interrupting): That might be a little confusing, Mr. Clark, in view of the fact that this only starts on Saturday instead of on Friday.

Mr. Clark: No, it starts on Friday.

Q. This Friday is picked up, isn't that right, Mr. Hammond?

A. That is correct.

Q. In other words, the column which is headed by an "F" indicates Friday, isn't that correct?

A. The first day of the week.

Q. And will you tell us whether that is a Friday preceding the Thursday upon which the week ends, or is it the Friday after the Thursday on which the week ends?

A. Preceding.

Q. Preceding.

So that your week starts with this last column headed with an "F", is that right?

A. That is correct.

Q. And now on this particular card, there is an "X" in that [2511] column which indicates no work was done, is that correct?

A. That is correct.

Q. And that is likewise true of the columns for Saturday and Sunday of that week?

(Testimony of Gordon L. Hammond.)

A. That is true.

Q. So that the first work done appears under the column for Monday, is that right?

A. That is right.

Q. And am I correct in stating that it is indicated on this card that 12 hours was worked by Mr. Ely on that day?

A. That is right.

Q. Can you tell us from this card what manner of work he did on the Monday preceding October 27th?

A. He helped the press; tie up cotton.

Q. And what basis have you for making that statement?

A. It indicates.

Q. In other words, the words "Help No. 4 Press," appear on the card; is that correct?

A. That is right.

Q. And can you tell us at what rate Mr. Ely was paid for that work as helper on No. 4 press?

A. 35 cents per hour.

Q. And how do you get that, Mr. Hammond? From the figure "35" under the column headed with the word "Rate" on this card?

A. I do. [2512]

Q. And from the further figures \$4.20 which appear opposite the figure "35", is that correct?

A. Yes, sir.

Q. Now, can you tell us what work Mr. Ely did on the next day, that is Tuesday of the week ending October 27th, 1938?

A. He tied out. There were two men working

(Testimony of Gordon L. Hammond.)

at the press. One ties out and weighs the bales, and the helper, he passes ties through to the man that is in front of the press box.

Q. Would you call the man that does the tying out a pressman? A. Yes, sir.

Q. All right.

And what does the record indicate that Mr. Ely did on the second day of his work during the week ending October 27th?

A. He was a pressman.

Q. He was a pressman.

And how many hours did he work on that day?

A. Twelve.

Q. And at what rate was he paid for that work?

A. 40 cents.

Q. 40 cents.

Mr. Mouritsen: Can we have how the card indicates he was a pressman?

Q. (By Mr. Clark) And will you please answer that for us? [2513]

A. The pressman was sick and off on that day. He was taking his place.

Q. How can you tell that from the record?

A. Well, I can't tell from the record, but I know the incidents.

Q. Well, what, Mr. Hammond—or why, rather, is the 12 hours which you tell us that Mr. L. E. Ely worked on Tuesday of that week in a column below that which indicates his work on the preceding day?

A. The card isn't quite complete. From making it out, I know. [2514]

(Testimony of Gordon L. Hammond.)

Q. You know what?

A. I know that is what happened, what he did.

Q. All right.

Now you are positive that he was paid at 35 cents an hour on the first day he worked during that week and that he worked as a helper, is that right?

A. Yes.

Q. And the rest of the week he was paid at the rate of 40 cents?

A. That is right.

Q. As shown by the card, is that right?

A. Yes.

Q. Is it your statement that during the rest of the week he was working as a press man, tying up?

A. Yes.

Q. Very well.

Now we will offer this card in evidence, Mr. Examiner, as Respondent Boswell's Exhibit 9(a).

Mr. Mouritsen: No objection.

Trial Examiner Lindsay: 9(a) is received in evidence.

(Thereupon the document above referred to was received in evidence and marked Respondent Boswell's Exhibit No. 9(a).)

(Testimony of Gordon L. Hammond.)

RESPONDENT'S EXHIBIT 9-A

J. G. BOSWELL COMPANY

Employee's

Week

Name	L. E. Ely	No.	Ending 10/27/1938								
Job Name or No.	Kind of Work Done	S	S	M	T	W	T	F	Hrs.	Rate	Amount
	Help No. 4 Press	x	x	12	x	x		x	12	35	4.20
Ginning					12	12	12		36	40	14.40
Oil Mill											
Card											
Load Cotton											
Cattle Feeding											
Hay Cutting											

CK. No.

Total

18.60

Approved

Weekly Time Card

/s/

G. L. H., Foreman

[Endorsed]: Filed 6/13/39.

Mr. Clark: All right.

Q. Now, let me direct your attention to Respondent Boswell's Exhibit 9(b), which is a similar card for the following week, [2515] that is, the week ending November 3, 1938, and I will ask you whether or not, Mr. Hammond, you can tell from this card how long, if ever, Mr. L. E. Ely continued to work as a pressman at the rate of 40 cents an hour? A. Until Tuesday night.

Q. All right. That is until Tuesday night of the week ending on Thursday, November 3, 1938, is that right? A. That is right.

(Testimony of Gordon L. Hammond.)

Q. And does the card show that he was paid at 40 cents for that work? A. It does.

Q. All right.

And then does the card show what happened to him?

A. Went back as a press helper on Thursday.

Q. And is there any information on this card which enables you to make that statement?

A. Yes, sir.

Q. Will you please state what that information is? A. Help press.

Q. You mean the words "help press"?

A. Yes.

Trial Examiner Lindsay: You will have to speak up. I can only get about half of it and I am sitting right next to him.

Mr. Clark: Speak up louder and take your time on it. [2516]

We will go back over that.

Q. You refer to the words "help press" which appear in the horizontal column under that which is indicated by the word "press," is that right? Is that true? A. That is true.

Q. Both of those descriptions being in pencil and not any portion of the printed—not any part of the printed portion of the card, is that right?

A. Yes, that is true.

Q. Now, can you tell us then when it was—withdraw that.

Can you tell us then from this card what Mr.

(Testimony of Gordon L. Hammond.)

Ely did or what job he worked at after he ceased being a press man?

A. He was a press helper.

Q. And when did he start work at that?

A. On Thursday morning. [2517]

Q. All right.

In other words the card shows, does it, Mr. Hammond, that Mr. L. E. Ely worked, continued to work as a pressman at 40 cents an hour to and including Tuesday of the week ending on Thursday, November 3rd, 1938, is that right?

A. That is right.

Q. And then that no work was done by Mr. Ely on Wednesday? A. That is right.

Q. And that on Thursday, November 3rd, 1938, he resumed work as a press helper? A. Yes.

Q. Is that true? A. That is true.

Q. What was the rate he was paid for that work? A. 35 cents.

Q. Very well.

We will offer the card just identified by the witness in evidence as Respondent Boswell's Exhibit 9-B.

Mr. Mouritsen: Could we have one question before that is ruled on?

Mr. Clark: Yes, sir.

Mr. Mouritsen: Mr. Hammond, what does the cross in Thursday's column of Boswell's 9-B for identification mean, above the number "11?"

The Witness: That shows he didn't work at the

(Testimony of Gordon L. Hammond.)

press, that [2518] he wasn't a pressman on Thursday, but was a press helper.

Q. For eleven hours, is that right?

A. That is right.

Mr. Mouritsen: No objection.

Q. (By Mr. Clark) And that eleven hours is what he was paid 35 cents for? A. Yes.

Trial Examiner Lindsay: 9-B received in evidence.

Mr. Clark: Very well.

(Thereupon, the document above referred to was received in evidence and marked as Respondent Boswell Company's Exhibit No. 9-B.)

RESPONDENT'S EXHIBIT 9-B

J. G. BOSWELL COMPANY

Employee's		Week									
Name	L. E. Ely	No.		Ending 11/3/1938							
Job Name or No.	Kind of Work Done	S	S	M	T	W	T	F	Hrs.	Rate	Amount
Press	Help Press	12	x	12	12	x	x	12	48	40	19.20
Ginning							11		11	35	3.85
Oil Mill											
Yard											
Load Cotton											
Cattle Feeding											
Hay Cutting											

CK. No. Total

2305

Approved

Weekly Time Card

/s/ G. L. H., Foreman

[Endorsed]: Filed 6/13/39.

(Testimony of Gordon L. Hammond.)

Q. (By Mr. Clark) Now, I will next direct your attention to the card which has been marked Respondent Boswell's Exhibit 9-C for identification, being that dated November 10th, 1938, and I will ask you whether or not this is Mr. L. E. Ely's time card for the next week, that is, that ending on Thursday, November 10th, 1938?

A. Yes, it is.

Q. And are the same facts true of this card as are true of the other two cards I have shown you with regard to the manner in which you kept the records shown on it?

A. It is.

Q. All right.

Can you tell us what this card shows, so far as the job at [2519] which Mr. L. E. Ely worked and the rate at which he was paid?

A. Press helper, 35 cents per hour.

Q. All right.

It shows, does it not, that he worked on the Friday preceding Thursday, November 10th, 1938, for the period of 12 hours; on Saturday for 12 hours; on Sunday no time was put in; on Monday 12 hours, Tuesday 12 hours, Wednesday 12 hours and Thursday, November 10th, 1938, 12 hours, as a press helper?

A. That is right.

Q. And he was paid for that at the rate of 35 cents per hour?

A. That is true.

Mr. Clark: We will offer it in evidence, Mr. Examiner, as Respondent Boswell's Exhibit 9-C.

Mr. Mouritsen: No objection.

Trial Examiner Lindsay: 9-C received.

(Testimony of Gordon L. Hammond.)

(Thereupon, the document above referred to was received in evidence and marked as Respondent Boswell Company's Exhibit No. 9-C.)

RESPONDENT'S EXHIBIT 9-C

J. G. BOSWELL COMPANY

Employee's		Week										
Name	L. E. Ely	No.				Ending 11/10/1938						
Job Name or No.	Kind of Work Done	S	S	M	T	W	T	F	Hrs.	Rate	Amount	
Ginning	Press hlpr	12	x	12	12	12	12	12	72	35	25.20	
Oil Mill												
Yard												
Load Cotton												
Cattle Feeding												
Hay Cutting												
	CK. No.	Total										
		Approved										
Weekly Time Card		/s/	G. L. H., Foreman									

[Endorsed]: Filed 6/13/39.

Q. (By Mr. Clark) And lastly, Mr. Hammond, I show you the time card for Mr. Ely which has been marked Respondent Boswell's Exhibit 9-D, and I will ask you whether the same facts are true with respect to this card and the manner in which you kept it as are true of the preceding three cards I have shown you? A. It is. [2520]

Q. All right.

Now, directing your attention to Respondent Boswell's Exhibit 9-D, I will ask you what this card

(Testimony of Gordon L. Hammond.)

indicates, so far as the job at which Mr. Ely, Mr. L. E. Ely worked, and the rate at which he was paid is concerned? A. He was a press helper.

Q. On what days, please?

A. Friday, Saturday, Monday, Tuesday and Wednesday.

Q. All right.

He was press helper on Friday prior to November 17th, 1938, and worked 12 hours, is that right?

A. That is right.

Q. And he had the same job and worked the same length of time on Saturday, is that right?

A. That is right.

Q. Did no work on Sunday? A. Yes.

Q. Oh. Then on Sunday he worked 10 hours loading cotton? A. That is right.

Q. And on Monday he worked 11 hours as a press helper? A. That is right.

Q. On Tuesday, 10 hours?

A. That is right.

Q. As press helper?

On Wednesday 10 hours as a press helper; right? [2521] A. That is right.

Q. And on Thursday, November 17th, no hours?

A. Two hours. He didn't work. That is the morning he came down and went to the doctor, and when he came back from the doctor's office, he said the doctor asked him to not work. He didn't actually work those two hours, but they gave him the two hours for being on duty.

(Testimony of Gordon L. Hammond.)

Q. All right.

Now, you are stating that from your independent recollection, Mr. Hammone? A. Yes.

Q. So that, if I understand you correctly then, Mr. L. E. Ely did not work at any job at the Boswell plant at Corcoran on the Wednesday preceding November 17th, which would be November 16th?

A. That is right.

Q. But you credited him for the two hours he was at the plant?

A. Yes. He went to the doctor's and then returned, and after he returned, why, he didn't work any more.

Q. All right.

Then he didn't work on Thursday?

A. No, he did not.

Q. And what was the rate at which he was paid during that entire week? A. 35 cents. [2522]

Mr. Clark: Very well. We will offer this card in evidence, Mr. Examiner, as Respondent Boswell's Exhibit 9-D.

Mr. Mouritsen: No objection.

Trial Examiner Lindsay: 9-D received.

(Thereupon, the document above referred to was received in evidence and marked as Respondent Boswell Company's Exhibit No. 9-D.)

(Testimony of Gordon L. Hammond.)

RESPONDENT'S EXHIBIT 9-D

J. G. BOSWELL COMPANY

Employee's		Week											
Name	L. E. Ely	No.	Ending 11/17/1938										
Job Name or No.	Kind of Work Done	S	S	M	T	W	T	F	Hrs.	Rate	Amount		
Ginning	press hlpr	12		11	10	2	x	12	47	35	16.45		
Oil Mill													
Yard													
Load Cotton	✓	10							10		3.50		
Cattle Feeding													
Hay Cutting													
CK. No.		Total										19.95	
		Approved											
Weekly Time Card		/s/	G. L. H., Foreman										

[Endorsed]: Filed 6/13/39.

Trial Examiner Lindsay: Off the record.

(Discussion outside the record.)

Mr. Clark: I will ask at this time, Mr. Examiner, that the following cards be marked for identification as Respondent Boswell's Exhibits next in order.

(Thereupon, the documents above referred to were marked as Respondent Boswell Company's Exhibit Nos. 22-A to 22-G, inclusive, respectively, for identification.)

Q. (By Mr. Clark) Mr. Hammond, I will hand

(Testimony of Gordon L. Hammond.)

you the seven cards which are purportedly time cards for Mr. Stephen Griffin, designated on some of them as "S. J. Griffin," and I will ask you to examine them and tell us whether or not the same facts are true of those cards with respect to the handwriting they are kept in, and the manner in which they are kept, as you have testified to concerning the other cards just admitted as Respondent Boswell's Exhibits 9-A to D inclusive?

A. (Examining documents) Yes, they are.

Q. All right. [2523]

In other words, all of these cards were kept by you currently in your own handwriting, is that right?

A. That is right.

Q. And from your direct knowledge concerning Mr. Griffin's activities for the Company at that time, is that right?

A. That is right.

Mr. Clark: Now, we will offer them in evidence, Mr. Examiner.

Mr. Mouritsen: No objection.

Mr. Clark: I ask that they be marked the same Exhibit numbers.

Trial Examiner Lindsay: Yes.

Mr. Mouritsen: No objection.

Trial Examiner Lindsay: Boswell's Exhibits 22-A to G, both inclusive, are received in evidence.

(Thereupon, the documents above referred to were received in evidence and marked as Respondent Boswell Company's Exhibits Nos. 22-A to 22-G inclusive, respectively.) [2524]

(Testimony of Gordon L. Hammond.)

RESPONDENT'S EXHIBIT 22-A

J. G. BOSWELL COMPANY

Employee's		Week									
Name	Steve Griffin	No.				Ending 8/5/1938					
Job Name or No.	Kind of Work Done	S	S	M	T	W	T	F	Hrs.	Rate	Amount
Ginning											
Oil Mill											
Card											
Load Cotton											
Cattle Feeding	✓	x	x	8	6	x	x	x	14	35	4.90
Hay Cutting		x	x	6	5	x	x	x	11		3.85
CK. No. 1172 Total											8.75
											.18
											8.57

Approved

Weekly Time Card

/s/ G. L. H., Foreman

RESPONDENT'S EXHIBIT 22-B

J. G. BOSWELL COMPANY

8 a. m.													
Employee's						Week							
Name		S. J. Griffin		No.		Ending 10/13/1938							
Job Name or No.	Kind of Work Done			S	S	M	T	W	T	F	Hrs.	Rate	Amount
Ginning	Cotton house								10		10		4.00
Oil Mill													
Card	Clean up			x	x	x	x	4		x	4		1.60
Load Cotton													
Cattle Feeding													
Hay Cutting													
Haul Planting Seed				x	x	x	x	6	6	x	12		4.80
Social Security No. 559-05-4991													
CK. No.		Total											10.40

Approved

Weekly Time Card

/s/ G. L. H., Foreman

(Testimony of Gordon L. Hammond.)

RESPONDENT'S EXHIBIT 22-C**J. G. BOSWELL COMPANY**

Employee's		Week											
Name	S. J. Griffin	No.				Ending 10/20/1938							
Job Name or No.	Kind of Work Done	S	S	M	T	W	T	F	Hrs.	Rate	Amount		
Ginning	Cotton house	5							5	40	2.00		
Oil Mill													
Card	Clean up			4	11		4		19		7.60		
Load Cotton	✓		4	4		12	4		24		9.60		
Cattle Feeding													
Hay Cutting													
Haul Planting Seed		6	4	4			6	6	26		10.40		
											<hr/>		
											29.60		
Material											1.90		
											<hr/>		
CK. No.	Total										27.10		

Approved

Weekly Time Card

/s/ G. L. H., Foreman

RESPONDENT'S EXHIBIT 22-D**J. G. BOSWELL COMPANY**

Employee's		Week											
Name	S. J. Griffin	No.				Ending 10/27/1938							
Job Name or No.	Kind of Work Done	S	S	M	T	W	T	F	Hrs.	Rate	Amount		
Ginning	help e house			6					6	40	2.40		
Oil Mill													
Yard	Cleanup	3						4	7		2.80		
Load Cotton	✓		9						9		3.60		
Cattle Feeding													
Hay Cutting													
Haul Planting Seed		9		6	12	12	12	7	58		23.20		
											<hr/>		
											32.00		
Less on ac.											5.00		
											<hr/>		
CK No.		Total									27.00		

Approved

Weekly Time Card

/s/ G. L. H., Foreman

(Testimony of Gordon L. Hammond.)

RESPONDENT'S EXHIBIT 22-E

J. G. BOSWELL COMPANY

Employee's		Week									
Name	S. J. Griffin	No.				Ending 11/3/1938					
Job Name or No.	Kind of Work Done	S	S	M	T	W	T	F	Hrs.	Rate	Amount
Ginning	C house				2	3	2		7	40	2.80
Oil Mill											
Yard											
Load Cotton	✓			6		2	2		10		4.00
Cattle Feeding											
Hay Cutting											
Haul Planting Seed		12	1	6	6		8	12	45		18.00
Do not hold out this week											

CK. No.	Total	24.80
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Approved

Weekly Time Card /s/ G. L. H., Foreman

RESPONDENT'S EXHIBIT 22-F

J. G. BOSWELL COMPANY

Employee's		Week											
Name	S. J. Griffin	No.		Ending 11/10/1938									
Job Name or No.	Kind of Work Done	S	S	M	T	W	T	F	Hrs.	Rate	Amount		
Ginning													
Oil Mill													
Yard													
Load Cotton	✓			3					3	40	1.20		
Cattle Feeding													
Hay Cutting													
Haul Planting Seed		12	2	12	12	12	12	12	74		29.60		
Less for 10 gal. Gas											1.65		
Less on ac.											5.00		

CK. No.	Total	22.95
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Approved

Weekly Time Card /s/ G. L. H., Foreman

(Testimony of Gordon L. Hammond.)

RESPONDENT'S EXHIBIT 22-G**J. G. BOSWELL COMPANY**

Employee's		Week											
Name	S. J. Griffin	No.				Ending 11/17/1938							
Job Name or No.	Kind of Work Done	S	S	M	T	W	T	F	Hrs.	Rate	Amount		
Ginning													
Oil Mill													
Yard	Clean up	2	4	3					9	40	3.60		
Load Cotton	✓							6	6		2.40		
Cattle Feeding													
Hay Cutting													
Haul Planting Seed		10		8	10	10	10	6	54		21.60		
No take out this week													
CK. No.		Total										27.60	
Approved													
Weekly Time Card		/s/ G. L. H., Foreman											

Q. (By Mr. Clark) Now, Mr. Hammond, let me ask you whether or not in the case of Mr. Steve Griffin, for instance, a time card similar to that which has been marked Respondent Boswell's Exhibit 22(a) is kept each week that he works for the company? A. It is.

Q. In other words, am I correct in stating—withdraw that.

In the case of Mr. Griffin, did he do any work for the Boswell Company during the year 1938 for which a time card was not kept?

A. No, he did not.

Q. Very well.

Now, have you examined the time cards kept for Mr. Griffin during the year 1938 prior to your taking the witness stand this afternoon?

(Testimony of Gordon L. Hammond.)

A. I have.

Q. I am talking about all the cards.

A. I have.

Q. And will you please tell us whether or not you found any card for Mr. Griffin prior to that which is marked Respondent Boswell's Exhibit 22(a), being the card for the week ending August 5, 1938?

A. No, I did not.

Q. All right.

Can you therefore tell us, Mr. Hammond, whether or not [2525] Steve Griffin did any work whatsoever for the Boswell Company at the plant here in Corcoran prior to that indicated on his card for the week ending August 5, 1938, being Respondent Boswell's Exhibit 22(a)?

A. No, he did not.

Q. All right.

You are positive of that? A. I am.

Q. Now, would you tell us what work Mr. Griffin did for the company during that week, that is, August 5, of 1938?

A. He fed cattle part of two days and helped cut hay part of two days.

Q. All right.

Now, is that answer there, that he fed cattle——

Trial Examiner Lindsay (Interrupting): He has got it.

Mr. Clark: Just so we are sure about that.

Q. The days that you refer to are what days, please?

A. Monday and Tuesday.

(Testimony of Gordon L. Hammond.)

Q. On Monday and Tuesday for the week ending August 5, 1938, he fed cattle part of the time, is that right? A. Part of two days.

Q. And what rate was he paid for that?

A. 35 cents.

Q. Per what? A. Per hour. [2526]

Q. All right.

And then what other work did he do during the week? A. He helped cut hay.

Q. What dates did he do that on?

A. The same days.

Q. Namely on Monday and Tuesday of the week ending August 5, 1938? A. That is right.

Q. And that being the week ending Thursday, August 5, 1938, is that right?

A. That is right.

Q. How much was he paid for that?

A. 35 cents per hour.

Q. All right.

Now, will you please tell us, Mr. Hammond, whether Steve Griffin did any further work whatsoever for the Boswell Company prior to the week ending October 13, 1938, and by that I mean, of course, work here at the plant that you would have supervision of. A. No, he did not.

Q. All right.

Did you find any time card for him at all for the period between the week ending August 5, 1938, and the week ending October 13, 1938?

A. No, I did not. [2527]

(Testimony of Gordon L. Hammond.)

Q. All right.

Now I show you Respondent Boswell's Exhibit 22(b), which is Mr. Griffin's time card for the week ending Thursday, October 13, 1938, and I will ask you if that indicates the next work that he did for the company after that in early August of that year?

A. It does.

Q. Now, can you tell us what work he did and on what days he worked during that week?

A. He helped haul planting seed part of the day of Wednesday.

Q. Well, would you mind if I make this suggestion——

Trial Examiner Lindsay (Interrupting): Let him describe the cards.

Mr. Clark: Very well.

The Witness: He helped haul planting seed part of the day on Wednesday, November 11th, and he did some cleaning up the balance of the day.

On Thursday, November 12, he helped unload cotton in the cotton house, or helped feed the suction out of the cotton house in one of the gins.

Mr. Mouritsen: What is that date?

Mr. Clark: Yes.

Q. Let me direct your attention to the fact that this is a card for the week ending October 13th. Now will you please [2528] repeat for us what work Mr. Griffin did during that week?

A. It would be the 12th and the 13th.

(Testimony of Gordon L. Hammond.)

Q. Which is the week ending Thursday, October 13th?

A. The 12th and 13th he worked.

Q. All right.

A. Instead of the 11th and 12th.

Q. All right.

Will you please give us the days and what he did.

A. He helped haul planting seed into the seed house to be stored part of the day on October 12th.

Q. Which is a Wednesday, is that right?

A. That is right.

Q. All right.

A. And the balance of the day he did some cleaning up; could be in the yard or it could have been in some of the buildings, cotton house or gin building.

Q. All right.

A. On October 13th he either unloaded cotton from the wagons into the cotton house or helped feed the suction that supplied the gin from the cotton house.

Q. All right.

Now, before we leave this card, Mr. Hammond, I want to ask you this: I will direct your attention to the fact that on Mr. Griffin's card for the week ending October 13, 1938, being Respondent Boswell's Exhibit 22(b) appear the words, [2529] underneath all other data on the card, "Social Security No. 559-05-4991."

(Testimony of Gordon L. Hammond.)

Now, does the fact that those words appear on this card indicate anything to you? A. Yes.

Q. Please state whether it does or not, first.

A. Yes.

Trial Examiner Lindsay: He said it does.

The Witness: Yes.

Mr. Clark: All right.

Q. What, please?

A. I asked him if he had a Social Security number with us the morning he went to work.

Q. Does the fact that the Social Security number appears on the card indicate that it was in this week upon which Mr. Griffin first went to work regularly for the company for any period of time?

A. Well, yes.

Q. Well now, let us have an explanation if you have one as to that.

A. Well, he worked in August there and I didn't ask for it. If I did, I put it on a piece of paper and turned it into the office on a piece of paper. I don't remember.

Q. All right.

Well, let us have—what is that? [2530]

Trial Examiner Lindsay: Now, Mr. Clark, just let this gentleman answer the questions on the card.

Mr. Clark: Very well.

Q. Let us have anything, Mr. Hammond, that you have to say concerning the reason for Mr. Griffin's Social Security number being placed upon

(Testimony of Gordon L. Hammond.)

this card which is the one for the week ending October 13, 1938.

Mr. Mouritsen: I will object on the ground it is already asked and answered.

Mr. Clark: I will submit that if he has any further explanation.

Trial Examiner Lindsay: If he has, all right, he may give it.

The Witness: I don't believe I have.

Mr. Clark: Very well.

Q. Now, Mr. Hammond, directing your attention to Respondent Boswell's Exhibit 22(a) which is the card for the week ending August 5, 1938, that is Mr. Griffin's card, and Respondent Boswell's Exhibit 22(b) which is Mr. Griffin's card for the week ending October 13, 1938, I will ask you whether Mr. Steve Griffin did any work for the Boswell Company at the Corcoran plant between August 3, 1938, and Wednesday, October 12, 1938? A. No, he did not.

Q. Now, directing your attention to the last of the seven [2531] Griffin cards, being Respondent Boswell's Exhibit 22(g) for the week ending November 17, 1938, I will ask you if you can tell from that card, Mr. Hammond, when the last day was that Mr. Griffin worked.

A. On November 17th.

Q. That would be on Thursday, November 17th?

A. Yes.

Q. And have you any other time cards for him for the year 1938? A. No, I haven't.

(Testimony of Gordon L. Hammond.)

Q. And, of course, you have no other further time cards for him up to the present time, have you?

A. No.

Q. All right.

Now, will you please tell us what job Mr. Griffin was occupied with during that last week?

A. (Examining document.)

Q. Well, I think I can shorten it this way: Can you tell us from this card whether, during that last week, Mr. Griffin was put during any of the time at simply cleaning up around the building?

A. He was.

Q. And during the rest of the time was he engaged in merely hauling planting seed?

A. And loading cotton. [2532]

Q. And loading cotton.

And for how long did he load cotton?

A. Six hours.

Q. Six hours that entire week, is that right?

A. That is right.

Mr. Clark: That is all on that.

Those are all in evidence?

Trial Examiner Lindsay: Yes.

Mr. Clark: Now, Mr. Examiner, with respect to the next phase of Mr. Hammond's examination, Mr. Wingrove will handle it.

Trial Examiner Lindsay: Would you like to move over there, Mr. Wingrove?

Mr. Wingrove: It might be a little better.

Q. Mr. Hammond, you testified that you are the

(Testimony of Gordon L. Hammond.)

superintendent of the plant at the J. G. Boswell Company at Corcoran.

Will you kindly describe what the plant consists of, that is, with regard to the number of gins and oil mills and the operation generally of the plant?

A. Well, there are six gins, one oil mill, one machine shop, one backsmith shop, and a garage, and a mixed feed plant.

Mr. Mouritsen: What was the last?

Trial Examiner Lindsay: I didn't get it.

The Witness: And a mixed feed plant. [2533]

Q. (By Mr. Wingrove): Mixed feed plant?

A. Yes.

Q. Is that part of the mill?

A. It is part of the operation at the plant.

Q. Are these six gins numbered? A. Yes.

Q. How are they numbered? Consecutively or otherwise?

A. Yes, one to six included.

Q. During the year 1937 did all six gins operate at any time during the year? A. They did.

Q. And when did they commence operations in the fall, if that was when they operated?

A. Oh, about September 20, 1937.

Q. And how many shifts were being worked at that time?

A. Right off the first day I couldn't say, but in less than a week's time they were all operating.

Q. How many shifts? A. Two shifts.

Q. And what do you mean "two shifts"?

(Testimony of Gordon L. Hammond.)

A. Well, each gin would have two 12-hour shifts.

Q. That worked steadily 24 hours a day, is that correct? A. That is correct.

Q. Now, how long did all six gins operate in the fall of 1937? [2534]

Mr. Mouritsen: I will object to it as immaterial, too remote.

Trial Examiner Lindsay: He may answer.

The Witness: Some time around the middle of December, 1937.

Q. (By Mr. Wingrove): And then were part of the gins shut down? A. They were.

Q. How many were shut down? A. Two.

Q. And then that left four gins operating.

Now, how long did these four gins continue to operate?

A. Up until some time in the middle of January, I believe, it was.

Q. And then were the number of gins reduced still further? A. They were.

Q. And how much were they reduced?

A. We operated two for a while longer.

Q. How long did you operate the two? Throughout the remainder of the season?

A. No, for two or three weeks.

Q. And then——

A. (Interrupting): Then we operated one.

Q. Then you operated one through the remainder of the season. [2535]

(Testimony of Gordon L. Hammond.)

When did the 1937-1938 ginning season end?

Mr. Mouritsen: I object to the question. It is a compound question to which the witness cannot make an assent without agreeing to two questions in one.

Trial Examiner Lindsay: Yes. One question hasn't been answered.

Mr. Wingrove: He put it down from two to one, he said.

Trial Examiner Lindsay: Yes, he did.

Mr. Mouritsen: May we have it read?

Mr. Wingrove: I am sorry. Maybe I was thinking ahead with the answer.

Trial Examiner Lindsay: Now, will you keep your voice up? You are used to talking around machinery and I am sure you must talk louder out there.

The Witness: You must realize I am a poor talker.

Trial Examiner Lindsay: Talk right up.

Will you please read that last question back that is not answered? It is a statement, rather, by Mr. Wingrove. [2536]

(The question referred to was read by the reporter, as set forth above.)

Q. (By Mr. Wingrove): Is that right, Mr. Hammond? A. That is right.

Q. And when did the 1937-1938 ginning season end?

A. Sometime in the latter part of February, 1938.

(Testimony of Gordon L. Hammond.)

Q. Now, how many gins were operated—placed in operation in the 1938-39 season?

Mr. Mouritsen: May we have that season defined, Mr. Examiner? It is—I will object to it on the ground it is vague and indefinite.

Trial Examiner Lindsay: Yes.

Q. (By Mr. Wingrove): When did the 1938-39 cotton ginning season commence, Mr. Hammond?

A. On September 30th, 1938.

Q. Is that the time that the cotton began to come into the field to be brought in for ginning?

A. That is right.

Q. Now, how many gins were started in September of 1938? A. One.

Q. Were any more gins placed in operation later? A. Yes.

Q. In the fall.

Can you tell me the dates the gins started in the fall of 1938? [2537]

A. I believe——

Q. (Interrupting): If you have any memorandum, you may refresh your recollection on that.

Mr. Mouritsen: Could I examine the memorandum to which the witness is referring?

The Witness (Examining document): Number 3 gin started on October 1st in 1938.

Trial Examiner Lindsay: I would like to know just one thing: Where these memorandums come from, and so on and so forth.

Mr. Wingrove: Yes. I will ask the question.

(Testimony of Gordon L. Hammond.)

Q. Mr. Hammond, where did you obtain the memorandum which you are now referring to?

A. I got them off the records in the gin operation.

Q. Off the records in the office at the Boswell plant? A. Yes.

Q. And did you prepare or obtain this information from the records yourself? A. I did.

Q. Then did you have it typed up in the office of the Company? A. I did.

Mr. Wingrove: Does that answer your question, Mr. Examiner?

Trial Examiner Lindsay: Yes.

Q. (By Mr. Wingrove): And in addition to that you were present—were you at the plant during the entire ginning season of 1938— [2538] 1939, Mr. Hammond.

A. Very nearly all of the time, yes.

Mr. Mouritsen: May we have the witness's recollection exhausted before he is permitted to refer to the memorandum?

Mr. Wingrove: Very well, but I think he is entitled to refer to the memorandum. I would like to have this information as accurate as we can, and not guess-work.

Mr. Mouritsen: I suggest that we obtain the original records. The purpose is that we have absolute accuracy.

Mr. Wingrove: I will ask him the question.

Q. Mr. Hammond, you testified that one gin started about September 30th, 1938?

(Testimony of Gordon L. Hammond.)

A. That is true.

Q. About a week later, another gin was opened?

A. Two or three days.

Q. Two or three days later? A. Yes.

Q. And after that, how long was it before you opened another gin, if you did open another one?

A. About two days.

Q. And did you open any more gins after that?

A. No. The two started on the same day.

Q. Two started on which date, Mr. Hammond?

A. On December 3rd, I believe it was.

Q. The two started about December 3rd? [2539]

A. I mean October——

Mr. Mouritsen (Interrupting): Mr. Wingrove, could I suggest—if we take a recess, we can probably get together about this information, and probably stipulate as to a lot of it. It will take two or three hours to get it in this way, and I think we will satisfy ourselves.

Mr. Clark: I suggest that is the way to do it, Mr. Examiner, and as I understand it—and I would like the witness to state in the record if it is true—as I understand it, the dates that appear on this memorandum, Mr. Hammond, to which you are testifying, are taken from original records at the Boswell plant, is that true?

Trial Examiner Lindsay: That is already in the record.

Mr. Clark: I want to know if it is or not.

Trial Examiner Lindsay: It surely is. The question was asked.

(Testimony of Gordon L. Hammond.)

Mr. Clark: Very well.

Trial Examiner Lindsay: You gentlemen can get together about it. We will have a recess.

(At this point a short recess was taken, after which proceedings were resumed as follows:)

Trial Examiner Lindsay: Hearing called to order.

Mr. Wingrove: Mr. Examiner, during the recess it is agreed between Mr. Mouritsen of counsel for the Board and myself that we will stipulate to what may be termed statistical [2540] data with regard to the operations of the Boswell plant at Corcoran for the years 1937 and 1938, and as I go along I will ask the witness to explain certain of the facts which we are going to stipulate to. [2541]

Mr. Mouritsen, may it be stipulated that the total number of employees in the Corcoran plant of the J. G. Boswell Company, exclusive of office help, who were on the payroll for the week ending October 28, 1937, was 189?

Mr. Mouritsen: So stipulated.

Mr. Wingrove: And that the total number of employees in the Corcoran plant, exclusive of office help, who were on the payroll for the week ending November 18, 1937, was 183?

Mr. Mouritsen: So stipulated.

Q. (By Mr. Wingrove): Mr. Hammond, when is the peak of the season with respect to the number of men employed each year?

A. Between October 15 and November 15.

(Testimony of Gordon L. Hammond.)

Q. Do these figures which are stipulated to as to the number of men employed in the plant represent approximately the peak of the number of men carried on the payroll in these two seasons?

A. Yes, it does.

Mr. Mouritsen: These indicate, these figures in each instance, indicate the average number of men for that week only?

The Witness: That is the total that was on the payroll that week, the total number. There are certain days as the number that were on the payroll that date.

Mr. Clark: Mr. Examiner, may I ask that that be read, that Mr. Wingrove's last statement be read back? I think he used the term "two seasons" which is not correct. [2542]

Mr. Wingrove: I think I did.

(The record referred to was read by the reporter, as set forth above.)

Mr. Wingrove: Might I have the word "seasons" changed to "weeks"?

Trial Examiner Lindsay: Yes.

Q. (By Mr. Wingrove) Now, Mr. Hammond, does the number of men employed increase during the early part of the season and decrease during the latter part of the season?

A. Yes, they do.

Mr. Wingrove: May it be stipulated, Mr. Mouritsen, that the total number of employees in the Corcoran plant exclusive of office help, that were

(Testimony of Gordon L. Hammond.)

carried on the payroll for the week ending October 27, 1938, was 86?

Mr. Mouritsen: So stipulated.

Mr. Wingrove: And may it also be stipulated that the total number of employees in the Corcoran plant exclusive of office help who were carried on the payroll for the week ending November 17, 1938, was 84?

Mr. Mouritsen: So stipulated.

Q. (By Mr. Wingrove) Mr. Hammond, these figures as to the number of men employed for the week ending October 27, 1938, and November 17, 1938, respectively, represent approximately the peak of the employment season?

A. Yes, it does. [2543]

Q. For the year 1938, the 1938 season, I mean?

A. Yes.

Mr. Wingrove: May it be stipulated that the total number of bales of cotton ginned in the Corcoran plant during the 1937-'38 ginning season was 47,250?

Mr. Mouritsen: So stipulated.

Mr. Wingrove: May it also be stipulated that the total number of bales of cotton ginned in the Corcoran plant during the 1938-'39 ginning season was 9,944?

Mr. Mouritsen: So stipulated.

Mr. Wingrove: May it also be stipulated that the total number of tons of seed crushed in the oil mill in the Corcoran plant in the 1937 season was 23,716 tons?

(Testimony of Gordon L. Hammond.)

Mr. Mouritsen: So stipulated.

Mr. Clark: The 37-38 season, is it understood?

The Witness: That is right.

Trial Examiner Lindsay: Wait a minute. Is that right?

Mr. Clark: I am asking.

Trial Examiner Lindsay: Just a moment.

Mr. Wingrove: I will ask the witness.

Q. Mr. Hammond, will you kindly explain how the seasons in the oil mill are treated? When you refer to the 1937 season what period of time do you mean?

A. That is all seed that was received at the mill for the ginning season for 1937 and '38. [2544]

Q. And what period of time would that cover, Mr. Hammond?

A. Well that seed in coming in—I don't know if I understand just what you want.

Q. Well, I mean what period of time would the 1937-38 season cover?

A. The ginning season would cover——

Q. (Interrupting) In the mill. I am *referring* the mill.

A. It would mean any time from the starting of the ginning season in 1937—the 1937 and '38 was in September, finished on September 27, 1938.

Trial Examiner Lindsay: All right.

Mr. Wingrove: May it be stipulated that the total number of tons of seed crushed in the oil mill

(Testimony of Gordon L. Hammond.)
of the Corcoran plant for the season 1938-39 was 5,668 tons?

Mr. Mouritsen: So stipulated if we can have that season defined.

Q. (By Mr. Wingrove) Will you kindly state, Mr. Hammond, what period of time was covered by the period 1938-39 season in the mill?

A. Well, that is the total tons of seed that was received at the mill, which are not all milled yet.

Mr. Clark: May I have the last of that? I can't hear it.

Trial Examiner Lindsay: Yes.

(The record referred to was read by the reporter, as [2545] set forth above.)

Q. (By Mr. Wingrove) There are still some of these 5,668 tons of seed on hand, then?

A. About 25 or 26 hundred tons.

Q. And the rest of the tonnage has been crushed, has it not? A. That is right.

Mr. Wingrove: May it be stipulated that the No. 1 gin started September 30, 1938, and closed down December 5, 1938?

Mr. Mouritsen: So stipulated.

Mr. Wingrove: And that the No. 1 gin subsequent to December 5, 1938, ran part time until December 30, 1938, and I will ask Mr. Hammond to explain that.

Mr. Mouritsen: So stipulated.

Q. (By Mr. Wingrove) Mr. Hammond, would

(Testimony of Gordon L. Hammond.)

you kindly state what you meant when you specified on this memorandum that the No. 1 gin ran part time after December 5, 1938, and prior to December 30, 1938?

A. There was some cotton come in after that date that we did gin on the No. 1 gin. [2546]

Mr. Clark: May I have that read?

(The record referred to was read by the reporter, as set forth above.)

Trial Examiner Lindsay: Talk a little louder, Mr. Hammond.

Q. (By Mr. Wingrove) You did run the Number 1 gin part of the time during that 25-day period, is that correct?

A. Yes. Sometimes we ran two or three hours, and some a half a day, and a few days, maybe all day.

Q. And were there any periods or any days during that 25-day period when the Number 1 gin didn't operate at all? A. Yes.

Q. About how many days do you think?

A. About half the time.

Mr. Wingrove: May it be stipulated that the Number 2 gin started October 3rd, 1938 and closed down December 3rd, 1938?

Mr. Mouritsen: So stipulated.

Q. (By Mr. Wingrove) During that period of time, to wit, October 3rd, 1938 to December 3rd, 1938, did the Number 2 gin run or operate continuously?

(Testimony of Gordon L. Hammond.)

A. From the time it started until that day, it did.

Q. That was one shift a day, I believe you testified to? A. That is right.

Q. One shift? A. One shift. [2547]

Q. Has the Number 2 gin operated at all since December 3rd, 1938? A. No, it has not.

Mr. Wingrove: May it be stipulated that the Number 3 gin started October 1st, 1938, and closed down January 24th, 1939?

Mr. Mouritsen: So stipulated.

Q. (By Mr. Wingrove) Now, did the Number 3 gin run or operate continuously during that period of time, Mr. Hammond?

A. Not quite all the time. There was some days during January that it didn't.

Q. Some days it didn't operate at all?

A. Yes.

Q. And were there any days when it did operate and only ran part of the day?

A. Yes, there was.

Q. During this period of time?

A. During the month of January.

Q. 1939.

Now, what was the reason that there were days when these gins didn't operate, and days when the gins only operated part of the day?

Mr. Mouritsen: I think counsel is referring only to the Number 3 gin in this instance? Isn't that correct, Mr. Wingrove?

(Testimony of Gordon L. Hammond.)

Mr. Wingrove: I will ask that general question about all [2548] of the gins here, that they only ran part time; Numbers 1, 2 and 3 just so far.

The Witness: Didn't have any cotton.

Q. (By Mr. Wingrove) What do you mean, you didn't have any cotton?

A. Wasn't any picked, any brought in.

Mr. Wingrove: May it be stipulated that the Number 4 gin started October 3rd, 1938 and closed down November 25th, 1938?

Mr. Mouritsen: So stipulated.

Q. (By Mr. Wingrove) Now, did the Number 4 gin operate continuously during this period of time, Mr. Hammond?

A. Yes, practically so.

Q. What do you mean by "practically so?"

A. Well, some Sundays we didn't gin any, not all of the time.

Q. Were there any days during this period of time at which the gin only operated part of a day?

A. Well, there were days it didn't operate 12 hours; I would say yes.

Q. And the reason for that, I understand, is the same reason that the other three gins didn't operate full time, no cotton coming in, is that correct?

A. That is right.

Mr. Wingrove: May it be stipulated that the number of bales, total number of bales of cotton ginned on the date of November 17th, 1937, was 468? [2549]

(Testimony of Gordon L. Hammond.)

Mr. Mouritsen: So stipulated.

Q. (By Mr. Wingrove) I would like to ask you, Mr. Hammond, if gins Numbers 3 and 4 have operated since the date it was stipulated they were closed? A. No, they haven't.

Mr. Wingrove: May it be stipulated that the total number of bales of cotton ginned on the day of November 17th, 1938, was 167?

Mr. Mouritsen: So stipulated.

The Witness: That is right.

Q. (By Mr. Wingrove) Mr. Hammond, if I undersand the figures, this represents only the number of bales which were ginned on these two particular days? A. That is right.

Mr. Wingrove: May it be stipulated that the total number of bales of cotton which were ginned to November 17th, 1937, in connection with the 1937-38 season, was 25,558?

Mr. Mouritsen: So stipulated.

Mr. Wingrove: May it also be stipulated that the total number of bales of cotton ginned to November 17th, 1938, for the 1938-39 season was 6,785?

Mr. Mouritsen: So stipulated.

Mr. Wingrove: May it be stipulated that the oil mill started September 20th, 1937 on the pressing of the 1937 seed, and that it closed March 7th, 1938; that it re-opened May 3rd, [2550] 1938 and closed again on May 17th, 1938?

Mr. Mouritsen: So stipulated.

(Testimony of Gordon L. Hammond.)

Q. (By Mr. Wingrove) Now, Mr. Hammond, am I correct in understanding that these three periods—two periods, rather—during which the mill operated in 1937, was in connection with the crushing of the 1937 seed? A. Yes.

Mr. Wingrove: May it be stipulated that the oil mill started July 1, 1938 and that it closed September 27th, 1938, and that during that period of time it was operating for the purpose of crushing the 1937 seed?

Mr. Mouritsen: So stipulated.

The Witness: That is right.

Mr. Wingrove: May it be stipulated that the oil mill started October 24th, 1938 on the crushing of the 1938 seed, and that it closed November 15th, 1938, and that it re-opened on January 5th, 1939 and closed again on January 12th, 1939; that it re-opened again on February 22nd, 1939 and closed again on February 24th, 1939; that it re-opened again April 29th, 1939 and ran until May 2nd, 1939?

Mr. Mouritsen: So stipulated.

Q. (By Mr. Wingrove) Mr. Hammond, has the oil mill operated at all since May 2nd, 1939?

A. Yes.

Q. When was that? [2551]

A. The first days of June.

Q. How long did that run, do you know?

A. Two days.

Q. Do you remember the days in June?

(Testimony of Gordon L. Hammond.)

A. No, I don't.

Q. Was it the early part of June?

A. Around the first days.

Q. 1939? A. That is right.

Q. Has it run any since that time, the two days it ran in June, 1939? A. No, it hasn't.

Q. Mr. Hammond, during these intervals when the mill operated, first commencing October 24th, 1939—'38, pardon me—and ending with the period in June when you finished running two days, am I correct in understanding that during those various operating periods, the mill was crushing the 1938 seed? A. Yes.

Q. Now, why was the mill operated for the two days in February, 1939?

A. We had some hot seed.

Q. And what do you mean by "hot seed?"

A. Some stored with excess moisture in them, and it doesn't store.

Q. Is it necessary to gin those seed to preserve them? [2552] A. It was.

Q. Now, why did the mill operate during the period April 29th to May 2nd, 1939?

A. We were short of feed.

Q. What do you mean by that?

A. Cake to feed the cattle.

Q. You are referring to the cake which is fed to the cattle at the plant, are you?

A. That is right.

Q. And why was the mill re-opened and operated for the two days in June of 1939?

(Testimony of Gordon L. Hammond.)

A. For the same purpose.

Q. Of obtaining cake to feed the cattle?

A. That is right.

Mr. Wingrove: May it be stipulated that the total number of tons of planting seed sacked from the 1937-season for 1938 planting was 1,537 tons?

Mr. Mouritsen: So stipulated.

Mr. Wingrove: May it be stipulated that the total number of tons of planting seed sacked from the 1938 season for the 1939 planting was 1,007 tons?

Mr. Mouritsen: So stipulated.

Mr. Wingrove: May it also be stipulated that on—as of November 17th, 1938, 879.4 tons of the planting seed which is being set aside for the 1939 planting season had been hauled and [2553] stored and that there was still some more planting seed on hand which remained sacked?

Mr. Mouritsen: So stipulated.

May we have the 1939 planting season defined?

Mr. Wingrove: I want to ask some questions in explanation of all of these.

Q. Mr. Hammond, will you kindly explain what is meant by the 1939 planting season?

A. We plant certain acres in 1938 to get our seed from for the planting of the 1939 crop, and as those acres are picked and brought into the gin, they are sacked and stored separate to the regular seed that goes to the mill.

Q. Am I correct in understanding, then, Mr.

(Testimony of Gordon L. Hammond.)

Hammond, that each year a certain amount of selected seed is set aside by the J. G. Boswell Company to be used for the planting of this cotton crop during the following season?

A. That is right, yes.

Q. And that is what we are referring to when we are discussing planting seed?

A. Yes, it is.

Mr. Wingrove: Does that answer your question?

Mr. Mouritsen: Well, of what season—what do you term the 1939 planting season?

The Witness: Beginning in March and continuing planting up until sometime about the first of June.

Mr. Mouritsen: And the 1939 season, that would be March [2554] to June of 1939?

The Witness: That is the planting season.

Mr. Clark: Mr. Examiner, may I ask one question?

Trial Examiner Lindsay: Yes.

Mr. Clark: Mr. Hammond, in storing planting seeds—seed to plant any particular acreage, do you take the seed from the cotton picked during the preceding years on those same acres?

The Witness: Not ordinarily. We have certain acres—there is a special seed planted one year to get our seed for the next year's planting.

Mr. Clark: All right.

Now, on this November 17th date that you heard a stipulation made concerning the amount of plant-

(Testimony of Gordon L. Hammond.)

ing seed which had been hauled during—up to that date of November 17th, 1938, do you know whether or not all the seed from the acreage given over to this planting seed had been stored by that time?

The Witness: Well, they had finished picking those acres that day. There was a few seeds sacked after that time, maybe a later picking.

Mr. Clark: Well, can you give us any idea concerning the proportion of the cotton picked from those acres which had been finished by that day, namely, November 17th?

Mr. Mouritsen: Well, I presume it is the difference between 839.4 tons and 1,007 tons. [2555]

Mr. Clark: Is that it?

The Witness: No. There was some other seed at that date already sacked that hadn't been weighed over the scale. I don't know the amount, probably 50 or 60 tons.

Q. (By Mr. Wingrove) Was this 1,007 tons of planting seed which was handled and laid away in 1938 the total number of tons which it was intended to, or which was laid aside for planting purposes in the season, 1939? A. That is right.

Trial Examiner Lindsay: Which was it? Laid away or intended to be laid away?

The Witness: That tonnage represents what was sacked for planting purposes. [2556]

Mr. Wingrove: May it be stipulated that the least number of men employed at the Corcoran plant of the J. G. Boswell Company, exclusive of

(Testimony of Gordon L. Hammond.)

office help, in the year 1937 was 48 men and the date of the minimum employment was April 22, 1937?

Mr. Mouritsen: So stipulated.

Mr. Wingrove: May it also be stipulated that the date—that the least number of men employed at the Corcoran plant of the J. G. Boswell Company, exclusive of office help, in the year 1938 was 45 men and that the date of that minimum of employment was April 14, 1938?

Mr. Mouritsen: So stipulated.

Mr. Wingrove: May it be stipulated that the least number of men who were employed in the Corcoran plant of the company, exclusive of office help, in the year 1939 was 55 and that the date of this minimum was April 22, 1939?

Mr. Mouritsen: So stipulated.

Q. (By Mr. Wingrove) Now, for fear I have overlooked it, I would like to ask you, Mr. Hammond, as to whether or not the No. 1 gin has operated since December 30, 1938?

A. No, it hasn't.

Q. Mr. Hammond, did you have a conversation with Mr. Prior on or about October 8, 1938?

A. Yes. [2557]

Q. Will you kindly state where you had this conversation?

A. It was in my office down at the plant.

Q. And who else was present, if anyone, besides yourself and Mr. Prior? A. No one.

(Testimony of Gordon L. Hammond.)

Q. Will you kindly state what the substance of that conversation was between yourself and Mr. Prior?

A. He told me that some of the boys that had been laid off when the mill closed down in September 27th had understood that the company didn't intend to re-employ them any more.

Q. And what did you say?

A. He asked me if that was true, and I told him no, that we didn't have work yet to employ them all, I was picking them up, though, and giving them work just as fast as we had work for them.

Q. Were the names of any employees mentioned in this conversation?

A. Yes, Mr. Martin, R. K. Martin, and Mr. Farr, George Andrade, and Boyd Ely, I believe.

Q. And what, if anything, was said about these respective employees?

A. I told him Mr. Martin was in to see me just a few days before and he told me he had a job at the Kingsburg oil mill, and they were going to call me to—and ask me if I would let them know when I got ready for him to come to work, and I told [2558] him that so far they hadn't called me. I told him that Boyd Ely hadn't worked in the gins any, that the mill wasn't running, and that as soon as we had work for him we would pick him up and let him know. I told him Andrade had worked at the gins and mill both and as soon as we had work I would pick him up, and that Mr. Farr had gone to Oklahoma and hadn't come back yet.

(Testimony of Gordon L. Hammond.)

Q. Mr. Hammond, when was the first time that you learned, or had called to your attention the fact that Mr. Prior was endeavoring to organize some of the employees of the company at the plant?

A. Well, that was some time around the first of September I believe. I don't remember the date.

Q. That was the first time that you had heard anything about Mr. Prior's union activities, was it?

A. I had heard it rumored that he had had a meeting in the American Legion hall in July. I don't remember just what time.

Q. Then, July was the first time you had heard any report at all?

A. Yes.

Mr. Mouritsen: May I have that last question and answer? I didn't get it?

Trial Examiner Lindsay: Yes. Read the question and answer. [2559]

(The record referred to was read by the reporter as set forth above.)

Q. (By Mr. Wingrove) Following October 8, 1938, did you again have a conversation with Mr. Prior?

A. Yes.

Q. Approximately what date was this next conversation you recall?

A. It was the 17th day of November.

Q. And what time of the day was it?

A. Around 9:00 o'clock in the morning.

Q. And where was the conversation held?

A. It was in the office in Mr. Bill Boswell's room—office room.

(Testimony of Gordon L. Hammond.)

Q. And who was present at that conversation?

A. Mr. Prior, R. K. Martin, Mr. Farr, and Lonnie Spear.

Q. Will you kindly state what was said by Mr. Prior and yourself and the other parties present during this meeting?

A. Mr. Prior said that they had had a meeting the night before and had elected officers.

Q. Did he tell you who the officers were who had been elected?

A. Yes, he did.

Q. That was the union officers he was referring to, was he?

A. Yes.

Q. All right.

Go right ahead. [2560]

A. He told me that he thought there was others working in the plant that would like to come but they seemed to be afraid to, afraid they would be laid off. He asked me if they would be if they went and I told him that they wouldn't, that he could tell them if they wanted to go it was all right for them to go, and if they would rather ask me, he could tell them to do so, or they could ask Mr. Robinson.

Q. What response, if any, did Mr. Prior make to that statement?

A. He just said that was fine.

Q. Did Mr. Spear say anything during this meeting?

A. Yes, he did.

Q. State what Mr. Spear said and what the reply was, if any.

A. I don't know whether Mr. Spear or Mr.

(Testimony of Gordon L. Hammond.)

Prior said something about the work—one of the two—any way, during the conversation at that time Mr. Spear said something—asked me something about not laying off any of their men. I told him I didn't know who the men were, that I had already told that morning that three of them wouldn't have any more work for them after that day as we would be through sacking the planting seed and we wouldn't have any more work for them the next few days.

Mr. Mouritsen: May I have that as to who was making this statement that the witness is now telling?

The Witness: I was making that statement. [2561]

Mr. Wingrove: Very well.

Q. Will you just continue, Mr. Hammond, please?

A. Mr. Spear told me at that time he would bring me a list of the names the next morning, and Mr. Prior turned around to him and said, "No, you can't do that. That is against the rules of the union."

Q. And who did you understand he intended when he was speaking about not laying any of their men off?

A. Well, I figured he meant the ones that belonged to the union.

Q. Who were these three men you had laid off that morning that you had told Mr. Prior and Mr. Spear had been laid off?

(Testimony of Gordon L. Hammond.)

A. He hadn't been laid off. I told him we would get through that day. He wouldn't be then, but he would be that night when we got through that morning.

Q. Who were those three men?

A. Stephen Griffin, W. R. Johnston, and E. L. Eller.

Q. Now, did you have any discussion at this conference regarding the running of the No. 4 gin?

A. Yes.

Q. What was said in that regard?

A. I told him I was planning on closing No. 4 gin down that day, and we talked about the labor conditions, and they asked if there wouldn't be some way we could run the—operate that gin longer. [2562]

I told them I would see if I couldn't operate some plan to do it.

Q. Now, was there anything said at this conversation regarding the intimidation of the employees so far as joining the union was concerned?

A. Yes, I believe Mr. Spear said that he had heard Tom and Joe Hammond was telling some of the employees that if they joined a union, they would be laid off.

Q. And what did you say, if anything?

A. I told them I didn't think they were saying so, because I had instructed them previous to that time to not tell anyone or say anything to them about the union, that they had a right to join a union or any union they wanted to, any of them.

(Testimony of Gordon L. Hammond.)

Q. And that is what you told Tom and Joe Hammond a few days previously?

A. That is what I told them. That was some time ago. That was in September.

Q. Was that the entire substance of the conversation which took place at that time?

A. (Pause)

Q. I am referring to this meeting of November 17, 1938.

A. As well as I can remember at this time.

Q. Now, following this conference did you do anything about changing the hours of operation of any of these gins.

A. Yes. [2563]

Q. What did you do?

A. Well, the following morning we started No. 2 and No. 4 gins at 7:00 o'clock and No. 1 and 3 at 10:00 o'clock.

Q. And what had been the practice with regard to opening the gins each day prior to this time?

A. All at the same time.

Q. What hours of the day?

A. At that time it was 7:00 o'clock.

Q. Now, did you issue any instructions as to how long the gins were to operate this following day?

A. Well, the No. 2 and 4 until 3:00 o'clock if there wasn't more cotton there than the other two gins could handle by night; if there was, they would operate longer.

(Testimony of Gordon L. Hammond.)

Q. What was your purpose in changing the ginning hours, cutting down the number of hours of operation of these gins?

A. Well, we couldn't operate only just certain hours. We would have to gin longer than six or eight hours, some of the gins anyway.

Q. Well, was your purpose to provide more employment to keep the gin running longer?

A. As long as we could, yes. [2564]

Q. Now, following this meeting with Mr. Prior and these other parties on November 17th, did you speak to Tom and Joe Hammond about the fact that Mr. Prior or Mr. Spear had claimed they were making intimidating remarks to some of the men about the Union? A. Yes, I did.

Q. When did you speak to them?

A. Oh, sometime during the day. I don't remember just when.

Q. And what did you tell them?

A. I asked them if they had been intimidating or telling any of them that they would be laid off if they joined a Union.

Mr. Mouritsen: May we have the foundation for this conversation laid?

Mr. Wingrove: Yes.

Q. You say this was how long afterwards, Mr. Hammond, after November 17th?

A. Well, this was during the day of November 17th.

Q. The same day.

Subsequent to the time you had met Mr. Prior?

(Testimony of Gordon L. Hammond.)

A. That is correct.

Q. And where did the conversation take place with Mr. Tom and Mr. Joe Hammond?

A. I don't believe I remember just when it was.

Q. Was anybody else present?

A. I don't think so. I couldn't say that. [2565]

Q. And did you tell Mr. Tom Hammond and Mr. Joe Hammond at this time as to what the Company's position was with respect to the men joining the Union?

A. Oh, I think that was the only thing I said to them. I don't believe I mentioned a thing to them—as well as I remember, I didn't.

Q. But you testified, I believe, a moment ago that you had spoken to them early in September about the matter?

A. Yes, I had.

Q. Now, that brings us up to November 18th, Mr. Hammond.

Now, where were you on November 18th?

A. Well, I was at the plant about 8:30 in the morning.

Q. When did you get there in the morning?

A. 6:00 o'clock.

Q. And you were there until about 8:00?

A. 8:30.

Q. 8:30.

And then did you leave? A. Yes, I did.

Q. Where did you go?

A. I went to Los Angeles.

Q. What was your purpose in going to Los Angeles?

(Testimony of Gordon L. Hammond.)

A. Well, my wife had a cousin visiting from Illinois to Los Angeles, and she had come up to visit her on the bus, and she was planning on going back to Los Angeles; and I told her [2566] that I would take her back to Los Angeles at that time, and my mother—and I had a sister—and me too—so they could make a trip to Los Angeles.

Q. Well, did you ask Mr. Louis T. Robinson's permission to leave the plant that day?

A. I did, yes.

Q. And did he give you permission?

A. Yes.

Q. Now, did you return to the plant again on the same day? A. Yes, I did.

Q. About what time of the day?

A. Well, it was about 7:00 o'clock.

Q. Did you know, Mr. Hammond, before you left the plant on that day that the employees of the Company intended to meet?

A. No, I didn't.

Q. You had no knowledge at all——

A. (Interrupting): No.

Q. (Continuing) ——is that right.

Now, did you give anyone permission or did you authorize anyone to shut down any of the gins or any of the machinery about the plant, or to leave their work during your absence?

A. No, I did not.

Q. When did you first learn of what had occurred during your absence?

A. When I came back that afternoon. [2567]

(Testimony of Gordon L. Hammond.)

Q. When you came back?

A. About 7:00 o'clock.

Q. About 7:00 o'clock that evening?

And what did you do after you came back to the plant that evening?

A. Well, I made up the time cards and weighed in some cotton at the plant.

Mr. Mouritsen: I couldn't hear that answer.

(The record referred to was read by the reporter, as set forth above.)

Q. (By Mr. Wingrove) Did you know that certain of the employees of the Company intended to meet in the office that evening?

A. No, I didn't.

Q. Had any of them asked permission to meet there? A. Not from me.

Q. Or did any of them ask permission after you came back? A. No, they did not.

Q. Were you present at that meeting?

A. No.

Q. You didn't take any part at all in the meeting? A. No.

Q. Now, did you have any conversation with Mr. Prior on or about November 26th, 1938?

A. Yes. It strikes me it was a little later than that. [2568]

Q. What is your best recollection?

A. Oh, the 28th, 29th, somewhere along there.

Q. Well, will you kindly state, Mr.—I will withdraw the question.

(Testimony of Gordon L. Hammond.)

You are not positive of the date, is that correct?

A. I am not positive.

Q. Will you kindly state where this conversation took place?

A. It was in W. W. Boswell's office out there at the plant.

Q. What time of day was it, if you recall?

A. It was in the afternoon, 2:00 or 3:00 o'clock; something near that time.

Q. Who, if anyone, was present in addition to yourself and Mr. Prior?

A. Mr. Spear and Mr. Martin.

Q. Will you kindly state the substance of the conversation which took place between the various parties who were present?

A. Mr. Prior wanted to know something about putting the men back to work that was off since they had the difficulty they had on November the 18th.

Q. Did he say anything about the—mention the Larson notice? A. Yes.

Q. What did he say about that?

A. He wanted to know if we had put up a notice that Mr. Larson had recommended be put up.

Q. And what reply, if any, did you make? [2569]

A. I told him we had.

Q. Now, did he ask for Mr. Robinson at this time when he called? A. He did.

Q. What, if anything, did you reply—what did he say?

A. He asked if he could see Mr. Robinson, and Mr. Robinson wasn't there that afternoon.

(Testimony of Gordon L. Hammond.)

Q. What did you tell him? A. I told——

Trial Examiner Lindsay (Interrupting): He answered that. You keep your voice up just a little too. You are dropping down, and he is getting worse.

Will you talk up just a little? It is hard to understand you.

The Witness: I will try.

Trial Examiner Lindsay: After all, I have to hear this testimony, Mr. Hammond, and I just can't hear it unless you speak loudly, and everyone out here must hear it too as far as the attorneys are concerned.

Q. (By Mr. Wingrove) You say he spoke to you about taking some of the men back to work?

A. Yes.

Q. Then what did you say?

A. I told him we would take any of them, or all of them back when we had work for them to work, beginning next morning or any [2570] time they wanted to come back.

Q. And what reply did he make to that, if any?

A. Well, I don't believe—I don't remember what he said at that time.

Q. Was that the substance of the conversation, this particular conversation, Mr. Hammond?

A. Yes.

Q. Now, following this date which you say was along a little later, as you believe, than November 26th, 1938, did you have any other conversation with Mr. Farr? A. Yes.

(Testimony of Gordon L. Hammond.)

Q. When was the next conversation?

A. The following morning.

Q. And where did that take place?

A. The same place.

Q. Who was present besides yourself and Mr. Prior? A. Mr. Martin.

Q. Will you kindly state the substance of the conversation which took place at this time?

A. Well, fairly much the same as it was the day before, only he asked me that morning if we would take them all back in a body. I told him we didn't have work for them, we couldn't take them all in a body. He asked me then if I would take them back next year. I told him I couldn't tell him that, because I was only a hired hand and I might not be there myself. [2571]

Then he told me that, or asked me, if we couldn't take them and put them in the warehouse tearing down stacks of cake and re-stacking them for two or three days.

I told him No, I couldn't do that. Then he told me if we wouldn't take them back, why, then, he would make us take them back as he had been up against a proposition like that before. [2572]

He said that they would tie up all the cotton oil and cake in the Boswell Company and he could tell me where they had tied up as much as a million dollars worth of property and he understood that Boswell had that much at times. They would tie it up to where it couldn't move.

Then he wanted to know if Mr. Robinson was in.

(Testimony of Gordon L. Hammond.)

I told him I would go and see, which I did. He was in conference with some parties and wasn't able to see him at that time.

He asked me if I would make an appointment with him for the next day, which I did.

Q. Have you ever talked to Mr. Prior since that time and prior to the hearing here?

A. No, I haven't.

Q. Mr. Hammond, were you present during the time that Mr. Farr was testifying in this hearing?

A. Part of the time.

Q. Do you recall his testimony that he had a conversation with you during the latter part of August 1938 in your office at which he testified that you asked him if he was a member of the union, stating, in substance, that you had heard he was a member and was carrying a receipt book on the job signing up members and was active in the union?

Were you present during that testimony?

A. Yes, I was.

Q. Did you ever have such a conversation with him? [2573]

A. I had a conversation with him, yes.

Q. Well, did you ever ask him during the conversation as to whether or not he was a member of the union?

A. No.

Q. Did you ever—what—when did you have a conversation with him, Mr. Hammond?

A. Oh, I would set the time some time in September, near the middle of September.

(Testimony of Gordon L. Hammond.)

Q. And where did the conversation take place?

A. It was in my office there at the plant.

Q. And who was present besides yourself and Mr. Prior? A. No one.

Q. Will you kindly state the substance of the conversation which you had with Mr. Farr at this time?

A. I told Mr. Farr that Andrew Galvan, one of the Mexicans, was employed there and had told me that he had asked him and Ygnacio Galvan to sign a paper; said he told them it come from the office, Mr. Robinson had give it to him, and they don't speak English very well, and I don't know if I understand just what he was talking about—so I asked him—said Galvan told me that he told them if they would sign that paper the company couldn't lay them off and they would get more money.

I told him I didn't know anything about it, but I would ask Mr. Farr about it. That is what the conversation was about. [2574]

Q. In other words, you repeated to Mr. Farr the conversation which you had had with Galvan, is that correct? A. That is right.

Q. What did Mr. Farr have to say about it?

A. He said that he hadn't had any paper, hadn't asked them to sign any paper, and he didn't know what they were talking about.

Q. During the course of this conversation did Mr. Farr discuss with you or did you discuss with Mr. Farr the working conditions in the plant?

(Testimony of Gordon L. Hammond.)

A. No, I did not.

Q. Did you in any wise discuss the union except in the respect you have mentioned?

A. No.

Q. Did you ever at any time, Mr. Hammond, tell Mr. Derichsweiler—I think referred to in this hearing as “Good Friday”—or his son, that if they would get rid of Mr. Farr that they or one of them could have Mr. Farr’s position with the company?

A. No, I didn’t.

Q. Now Mr. Farr testified that he left the employ of the J. G. Boswell Company in the summer of 1937 to take a position with the San Joaquin Ginning Company.

Did you hear that testimony?

A. Yes, I did. [2575]

Q. And he testified that when he came back about a month later to get his check he saw you and claimed that you told him at that time, “When you want to come back home, you can come back home. There is a job waiting for you.”

Did you ever make such a statement to Mr. Farr?

A. No, not that I remember of.

Q. Now, did you have a conversation with Mr. Farr when he came back to get his check after he had gone to work for this other outfit?

A. Yes.

Mr. Mouritsen: By “this other outfit” do you mean——

Mr. Wingrove (Interrupting): I mean the San Joaquin Ginning Company, sometimes referred to

(Testimony of Gordon L. Hammond.)

in the testimony as Anderson Clayton Company.

Q. What was the substance of the conversation which you had with him?

A. He was telling me about where he was working, what he was doing.

Q. Where did this conversation—pardon me—was that all?

A. No. He told me——

Mr. Mouritsen (Interrupting): May we have the foundation laid?

Mr. Wingrove: I was just going to ask him that. I am sorry. I will withdraw the question.

Q. Where did the conversation take place, Mr. Hammond? [2576]

A. It was out near the office between the office and the mill building.

Q. You say it was about a month after Farr had gone away?

A. No, it wasn't that long. It was nearer two weeks.

Q. Was anyone else present besides yourself and Mr. Farr?

A. I don't remember. I don't believe so.

Q. Now, will you kindly state the substance of the conversation that you had with Mr. Farr at that time?

A. He told me that he was helping erect a gin north of Tulare at that time.

Q. Was that all he said?

A. That is about all.

Q. Did he discuss coming back to work at all?

(Testimony of Gordon L. Hammond.)

A. No, not at that time.

Q. Did you hear Mr. Farr's testimony that during the latter part of August and at various and sundry times previous thereto, he had complained to you about the hours at the plant being too long?

A. Yes, I remember that.

Q. Did Mr. Farr ever make any such complaint to you at any time? A. Never did.

Q. Do you recall Mr. Farr's testimony that at one time he picked you up in his car—I don't remember the date. I don't think he fixed the date—and brought you back to the [2577] plant and he testified that during that short trip you had some conversation about the union and the hours at the plant.

Do you recall that incident? A. Yes.

Q. Did you have any such conversation with him at that time?

A. Oh, I had a conversation with him but not in connection with any union that I recall.

Q. Did you hear Mr. Farr's testimony that he returned to the office about November 26, 1938, for the purpose of getting his check; that he found Mr. Spear was there talking to you and when he asked you about his check he told you that he was ready for work and that you told him, "Well, under these conditions, we can't use you at this time?"

A. I heard that.

Q. Do you recall that testimony of Mr. Farr?

A. Yes, sir.

(Testimony of Gordon L. Hammond.)

Q. Did you have any such conversation at that time or any other time with him?

A. No, I did not.

Q. Now, did you have a conversation with Mr. Farr during the month of September 1938?

A. Yes.

Q. Where did this conversation take place?

Mr. Mouritsen: I object to that as incompetent, irrelevant and immaterial unless it is connected up in some [2578] way with this matter that we are now investigating.

Mr. Wingrove: I intend to connect it up, Mr. Mouritsen, in just a moment.

Trial Examiner Lindsay: Yes. He may answer.

The Witness: Yes, I did.

Mr. Wingrove: Will you read back a little bit, please? I have lost myself now.

May I have the question and answer read back, Mr. Examiner?

Trial Examiner Lindsay: Yes.

(The record referred to was read by the reporter, as set forth above.)

Trial Examiner Lindsay: That answer may go out.

Q. (By Mr. Wingrove) Where was this conversation that you had with Mr. Farr some time in the month of September, Mr. Hammond?

A. It was between the oil mill and the No. 1 seed house at the plant.

Q. Can you fix the date any more definitely than some time during the month?

(Testimony of Gordon L. Hammond.)

A. Some time around the middle of the month or just after the middle of September, 1938.

Q. Was anyone else present?

A. I don't remember; there could have been.

Q. What was the subject of the conversation? [2579]

A. At that time he told me that he wanted a farm next year and that he had a piece of land in view. Also at that time he asked me if, when the mill finished the season, if it would be all right for him to make a trip to Oklahoma. He wanted to go see his father. I told him it was all right, to go ahead, that there wouldn't be very much doing anyway and he would get back by the time we went to ginning.

Q. Now, at a later date did you have a further conversation with Mr. Farr? A. Yes.

Q. About what date was this next conversation that you had with him?

A. It was around—on or about the 10th or 12th of November.

Q. 1938? A. Yes.

Q. And where did this conversation take place?

A. It was in between No. 1 and 2 gin.

Q. Was there anyone else present?

A. There was others present, but the machinery was running. I don't know if any others heard the conversation.

Q. Will you kindly state the substance of the

(Testimony of Gordon L. Hammond.)

conversation that you had with Mr. Farr at this time?

A. He told me that he had rented a piece of land two miles and a half north of the Webb gin up on the highway this side [2580] of Tulare. He wanted to know if I knew whether the company would finance him in the crop for this year or not. I told him I didn't know but I would find out for him.

Q. Did you find out for him? A. Yes.

Q. What did you find out?

A. I found out that they would provided there was acreage in the program and there was water on the land to irrigate with.

Q. Now, did you communicate this information to Mr. Farr? A. I did.

Q. When?

A. A day or so afterwards.

Mr. Mouritsen: What was that original date?

Mr. Wingrove: About November 10 or 12.

Q. What did he say, if anything?

A. I told him that Mr. Armour—he was the man I talked to in regard to it—told him that if he would get Mr. Hubbard to go with him over and look at the land, and see about the water and the acreage that was in the program.

Q. What do you mean by “program,” Mr. Hammond?

A. I don't know if I am familiar with it enough to explain it or not. Anyway, the Government has

(Testimony of Gordon L. Hammond.)

a program, so many acres to be tilled to cotton and so many to other stuff—I don't think—I might not explain that just right. [2581]

Q. Is that commonly known as the Soil Conservation Program? A. Can be, yes.

Q. Mr. Hammond, were you present during Mr. R. K. Martin's testimony?

A. I was part of the time. I don't know—(pause.)

Q. Well, were you present when Mr. Martin testified in substance that Tom Hammand had told him that you, Gordon Hammond, had a letter from J. G. Boswell stating if they did—referring to the company—the union, pardon me—if they did, the union did come, to lock up?

Were you present when Mr. Martin testified to that? A. I was.

Q. Mr. Hammond, did you ever have any letter from J. G. Boswell stating either in substance or effect that the company would lock up the plant if the union came? A. No, I never did.

Q. Did you ever have any letter of any kind from Mr. J. G. Boswell yourself regarding the union? A. No.

Q. Mr. Hammond, did you have a conversation with Mr. E. C. Powell on or about November 1st or on or about November 6th, either date, during the course of which you asked him to furnish you information regarding the union? A. No.

Mr. Mouritsen: I object to this upon the ground

(Testimony of Gordon L. Hammond.)

it is [2582] not the proper method of impeaching a witness, making a denial. We have the official transcript and I suggest that it be read to the witness.

Mr. Wingrove: I was trying to save time rather than read all that testimony, but I will be glad to do that if you desire.

Mr. Mouritsen: I will withdraw the objection, then.

Trial Examiner Lindsay: All right.

Mr. Wingrove: Will you read the question—may I have the question read back, Mr. Examiner?

(The record referred to was read by the reporter, as set forth above.)

Q. (By Mr. Wingrove): Did Mr. Powell—I withdraw the question.

Did you ever at any time ask Mr. Powell to obtain and furnish you with information regarding the union? A. No, I did not.

Q. Did he ever at any time offer to obtain and furnish you with such information?

A. No, he did not.

Q. Did Mr. Powell tell you on or about November 6, 1938, who the union officers were and who had been present at one of the union meetings?

A. No.

Q. Did he ever convey that information to you at any other [2583] time? A. He did not.

Q. Did you ever ask him for such information?

A. I did not.

(Testimony of Gordon L. Hammond.)

Q. Did Mr. Powell tell you on or about November 17, 1938, that he, Mr. Powell, together with Mr. Johnston, Mr. Elgin Ely, and Mr. Steve Griffin had joined the union? A. No.

Q. Did he ever convey that information to you at any other time? A. No, he did not.

Q. Did you ever at any time request him to furnish you with such information?

A. No, I did not.

Q. Mr. Hammond, were you present when Mr. Powell testified that he met you at the plant about 8:00 o'clock in the morning of November 18, 1938?

A. Yes.

Q. Do you recall that incident? A. I do.

Q. And do you recall that he testified that you asked him if he were sure that Briley, Griffin, and Andrade were union members?

A. I heard the testimony?

Q. Do you recall that testimony? [2584]

A. Yes.

Q. Do you also recall his testimony to the effect that you stated to him at that time that you were going to be away a while and the boys were going to have a get-together over there after a while, kind of keep things calm as possible.

Do you recall that testimony of Mr. Powell?

A. Yes, I do.

Q. Mr. Hammond, did you meet Mr. Powell at the plant on the morning of November 18th at 8:00 o'clock?

(Testimony of Gordon L. Hammond.)

A. Not at 8:00 o'clock. I seen Mr. Powell that morning in the warehouse. [2585]

Q. Did you have any conversation with Mr. Powell on the morning of November 8th, 1938?

A. No, I did not.

Q. Did you have any conversation with him at any other time during that day? A. No.

Q. Then of course if you had no conversation, you didn't make any of these statements to him, is that correct?

A. I didn't make any of them.

Q. Did you hear Mr. Powell's testimony that a few days after November 18th, 1938, you sent Clyde Sitton out to tell him, Mr. Powell, that you would like to see him, for him to come down to the office? Do you recall that? A. Yes, I do.

Q. Did you send Mr. Clyde Sitton out on November, a few days after November 18th, to get Mr. Powell to come in? A. No, I did not.

Q. Did you ever send Mr. Sitton out at any time to ask Mr. Powell to come in to see you?

A. No.

Q. Did you ever send anybody else out to ask Mr. Powell to come to see you at any time?

A. No.

Q. Do you recall Mr. Powell's testimony that about November 20th, 1938, he called and saw you at your office, and you said [2586] that you had nothing against him and he could go back to work if he wanted to, and Mr. Powell testified—he told

(Testimony of Gordon L. Hammond.)

you at that time that he was afraid, said he thought he had better string along with the Union men, or words to that effect? Do you recall that testimony? A. Yes, I do.

Q. Did you ever have any such conversation with Mr. Powell on that date?

A. No, not that I can recall.

Q. Did you ever have any such conversation with Mr. Powell on any other date?

A. Not that conversation, no.

Q. Did you hear Mr. Powell's testimony, Mr. Hammond, to the effect that he reported to you nearly every day, sometimes when you were passing through the plant, and that he would give you information about the Union?

A. Yes, I heard that.

Q. Did he ever report to you at any time about the Union? A. No, he never did.

Q. Did you ever ask him to report to you about the Union activities? A. No, I never.

Q. Do you recall Mr. Powell's testimony to the effect that at the time of his first conversation with you on or about November 1st or November 6th, 1938, you said he could have a [2587] job as long as he wanted it, as long as he didn't have anything to do with the Union, or words to that effect?

Do you recall that? A. I heard that

Q. Did you ever have any such conversation with him? A. No, I haven't.

Q. Did you ever make such a statement to him at any time? A. No, I never did.

(Testimony of Gordon L. Hammond.)

Q. Did Mr. Powell report to you on or about November 12th, 1938, that the night previous, he Powell, together with Winslow, Johnston, Elgin Ely, made Union applications, or words to that effect? A. No, he did not.

Q. Did you have any conversation with him on November 12th, 1938?

A. Not that I can recall.

Q. Did you have any such conversation with him at any time?

A. Not in connection with the Union, no.

Q. Do you recall Mr. Powell's testimony that on the morning of November 17th, 1938, he told you that he had become a member of the Union the night before and couldn't reveal any more Union secrets?

A. I remember that testimony.

Q. Did you have any such conversation with Mr. Powell? A. No.

Q. At any time? [2588]

A. No, I did not.

Q. Did Mr. Powell at any time give you that information? A. No, he never did.

Q. Did you ever at any time tell Mr. Powell in substance or effect that the Union was all "hooley," it was just a bunch of fellows claiming something they couldn't back up? A. No, I didn't.

Q. You heard Mr. Powell's testimony, didn't you about the Union being all "hooley?"

A. Yes, I heard that.

Q. You made no such statement to him?

A. No.

(Testimony of Gordon L. Hammond.)

Q. Did you ever at any time make any statements to him concerning the Union?

A. Not that I remember of.

Q. Do you recall Mr. Powell's testimony that he talked with you in the office right after receiving the letter of November 28th, 1938, from the Company, and that you said to him at that time that you didn't have a thing against him, he could come back to work and that the Union was "hooley," or words to that effect?

Do you recall his testimony in that regard?

A. Yes, I do.

Q. Did you ever have any such conversation with Mr. Powell?

A. Well, along or near that time, Mr. Powell did come into the [2589] the office and wanted me or someone to write the insurance company in connection with his finger.

Q. Well, who was present besides yourself and Mr. Powell, if anyone?

A. No one. Mr. Clow, Guy Clow, handles that, and he wasn't there at that time. [2590]

Q. All right.

And what was said?

A. Well, I asked Mr. Powell—either asked him what they were going to do if they were coming back to work, or if he was coming back to work—I don't know which. He told me they wouldn't let him. I asked him who. He said, "Mr. Prior."

Q. Was that the substance of the conversations?

(Testimony of Gordon L. Hammond.)

A. Yes, it was.

Q. Well, now, during the course of this conversation, did you tell Mr. Powell that you didn't have anything against him, and he could come back to work, and the Union was all "hooley," or words to that effect?

A. No, I didn't say that.

Q. This conversation that you have testified to was the sole and only conversation that you did have with him about this date, is that correct?

A. At that time.

Q. Do you recall Mr. Powell's testimony to the effect that he talked to you at the office about December 1st, 1938, and that you offered him a job if he would discontinue his Union activities? Do you recall that?

A. Yes, I do.

Q. Did you ever have any such conversation with him?

A. No, I didn't.

Q. Did you ever make any statement to him at any time that [2591] he could come back to work if he would discontinue his Union activities?

A. No, I did not.

Q. Now, you have just testified, Mr. Hammond, to a conversation which you had with Mr. Powell some time after the letter of November 28th.

Subsequent to that time, did you have any further conversation with Mr. Powell?

A. Yes, but I don't remember. It was either the latter part of December or the first of January of 1939.

Q. Where did that conversation take place?

(Testimony of Gordon L. Hammond.)

A. That was in the office.

Q. And who was present?

A. There wasn't anyone at that time.

Q. I mean, of course, besides yourself and Mr. Powell? A. No one.

Q. And what was the substance of that conversation?

A. He had a copy of a letter from an insurance company telling that they had issued him a check, and he wanted to know if it was there, for compensation.

Q. Is that all of that conversation?

A. Yes. Mr. Clow—that was on Saturday afternoon—Mr. Clow, he handled that, and he wasn't there, so I didn't know if the check was there or not.

Q. Well, Mr. Hammond, are those the only two conversations [2592] which you had with Mr. Powell which might have any bearing on this particular hearing? A. That is right.

Q. And you didn't have any of those other conversations which he testified to?

Mr. Mouritsen: Objected to as vague and indefinite.

Trial Examiner Lindsay: Sustained. It has been previously answered.

We will adjourn until 8:00 o'clock in the morning.

(Whereupon, at 4:35 o'clock P. M., June 3, 1939, the hearing was adjourned to 8:00 o'clock A. M., Wednesday, June 14, 1939.) [2593]

American Legion Hall
Corcoran, California
Wednesday, June 14, 1939.
8:00 o'clock A. M. [2594]

PROCEEDINGS

Trial Examiner Lindsay: Hearing called to order.

Mr. Clark: Now, Mr. Examiner, before we go ahead with Mr. Gordon Hammond, I would like to direct your attention to page 2427 of the transcript, which is that of the day before yesterday, at line 11, being Volume XVIII, a question by me:

“Now, was that conversation then between you and Walter Winslow in connection with the discussion confirming the authority of Tom Hammond.”

The word “confirming” should be “concerning,” as will be seen.

Trial Examiner Lindsay: That is correct.

Mr. Mouritsen: Yes.

Mr. Clark: So stipulated?

Mr. Mouritsen: So stipulated.

Mr. Clark: That is in line 12 on page 2427, Mr. Wingrove.

That completes all the corrections so far as we are concerned, in Volume XVIII.

Now, directing attention to yesterday's transcript, first let me call attention to page 2450, line 22, the answer of Mr. Robinson concerning the employees

Al Chestnut and Lee Chestnut, starting ahead a few lines, it reads as follows:

“That District—” referring to the Lovelace Reclamation District—“didn’t have any compensation insurance, so we carried him—” that is, Al Chestnut—“on our payroll to keep [2596] him covered by compensation, and at the time we made the settlement with him,” the transcript reads, and it should be “them” if you will read the whole answer. It is a contractual relationship between the Lovelace Reclamation District and Boswell.

Mr. Mouritsen: Doesn’t that refer to the singular in all of that page?

Mr. Clark: No, sir, it does not. Here is your whole answer. There was no settlement with this man Chestnut. Here is your whole answer:

“Q. And what was the occasion for his employment?

“A. The J. G. Boswell Company contracted to pump the water off of the Lovelace Reclamation District. According to the terms of the contract, it would be one price if we furnished men to supervise the running of the engines or the pumps, and another price if they furnished the men to supervise that operation. They elected to furnish the men to supervise that operation, and Al Chestnut was one of the men they furnished, the Peterson Farms Company being located in the Lovelace Reclamation District. That District didn’t have any compensation insurance, so we carried him on our payroll to keep him covered by compensation, and at

the time we made the settlement—" "with them," it ought to be—"that was taken into consideration in the settlement."

That is, the settlement between the two contracting parties, [2597] namely, the District and the Boswell Company.

Trial Examiner Lindsay: Off the record.

(Discussion outside the record.)

Mr. Clark: Now, further, I would like to direct attention to page 2464, line 20, in a statement made by Trial Examiner Lindsay to Mr. Robinson when he was on the stand. The transcript reads: "You are an authority out there, aren't you?"

I think the statement should be, "You are an authority out there, aren't you?"

Trial Examiner Lindsay: That is correct.

Mr. Clark: May that be stipulated and changed, the word "and" changed to "in?"

Mr. Mouritsen: So stipulated.

Mr. Clark: Very well.

Now I think Mr. Wingrove has some corrections in his part of the testimony. [2598]

Mr. Wingrove: I would like to call the Examiner's attention to yesterday's transcript, page 2540, line 24, in which I made the following statement: "Mr. Examiner, during the recess it is agreed between Mr. Mouritsen"—it reads now "and counsel for the Board." And I stated "Mr. Mouritsen, of counsel for the Board."

May that be corrected?

Mr. Mouritsen: So stipulated.

Mr. Wingrove: I also desire to direct your Honor's attention to page 2550 of yesterday's transcript, and I will direct Mr. Mouritsen's attention to the memorandum from which we entered into the stipulation—the line on page 2550, which is line 24. It now reads: "Mr. Wingrove: May it be stipulated that the oil mill started September 27, 1937, on the pressing of the 1937 seed, and that it closed March 7, 1938";

Now, the correct date in September is September 20th instead of September 27th. May it be so stipulated?

Mr. Mouritsen: So stipulated.

Mr. Wingrove: I also desire to direct attention to page 2551 of yesterday's transcript, line 16. It now reads: "And that it"—referring to the oil mill—"closed November 13, 1938."

The correct date in that regard is November 15, 1938.

Mr. Mouritsen: So stipulated. [2599]

Mr. Wingrove: And line 18 of the same page now reads: "That it re-opened"—referring to the oil mill—"again on January 22, 1939."

That date should be February 22, 1939.

Mr. Mouritsen: So stipulated.

Mr. Wingrove: Now, directing your attention to page 2553 of the transcript, line 24, it now reads: "November 17, 1938, 839.4 tons of the planting seed."

The correct figure in regard to tonnage was 879.4.

Mr. Mouritsen: Correct. I will so stipulate.

Mr. Wingrove: Page 2554, line 2—lines 1 and 2—now read: “Stored and that there was still some more planting seed on hand which remained unsacked?”

And the proper word there should be “sacked” instead of “unsacked.”

Mr. Mouritsen: So stipulated.

Mr. Wingrove: Page 2561, lines 21 and 22—pardon me. I should have said lines 20 and 21. I will have to read back there.

I will start in with line 17. This is the testimony or statement of Mr. Hammond:

“I told him I didn’t know who the men were, that I had already told that morning that three of them wouldn’t have any more work for them after that day as we would be through planting the second planting seed and we wouldn’t have any [2600] more work for them the next few days.”

Now, I am confident—that doesn’t make sense—and I am confident the witness’ testimony was: “That we would be through planting the season’s—we would be through sacking the season’s planting seed.”

There is no such thing as second planting seed in the testimony.

Here is the meaningless part: “We would be through planting the second planting seed and we wouldn’t have any more work for them the next few days.”

I am confident the witness' testimony in that regard was that we would be through sacking the planting seed—or, sacking the season's planting seed.

Trial Examiner Lindsay: Just a second.

The word "sacking" is in there.

Mr. Mouritsen: And the word "second" isn't?

"Through sacking the planting seed."

Mr. Wingrove: That is probably correct.

Mr. Mouritsen: Yes, I will so stipulate.

Mr. Wingrove: We will eliminate entirely the word "second."

Mr. Mouritsen: So stipulated. [2601]

Mr. Wingrove: Page 2571, line 9; I will start reading with line 8:

"Q. Now, following this date which you say was along a little later, as you believe, that November 26th, 1938—" I am confident the word was "than," instead of "that."

Mr. Mouritsen: So stipulated.

Mr. Wingrove: At page 2574, line 11:

"Q. And who was present besides yourself and Mr. Prior?"

May it be stipulated that question was directed to a conversation which the witness had with Mr. Farr, as it so indicates. I will read two more lines:

"A. No one.

"Q. Will you kindly state the substance of the conversation which you had with Mr. Farr at this time?"

I would like to change the word "Prior" to "Farr," as it is manifestly an error.

Trial Examiner Lindsay: Off the record a moment.

(Discussion outside the record.)

Mr. Wingrove: Mr. Hammond, please.

Those are all of the corrections that I have any notation of.

GORDON L. HAMMOND

the witness on the stand at the time of adjournment, resumed the stand and was further examined and testified as follows: [2602]

Direct Examination

(Continued)

Q. (By Mr. Wingrove) Mr. Hammond, I asked you yesterday if you were present during the time Mr. Farr was testifying in this hearing, and you replied that you were part of the time.

I then asked you if you recalled Mr. Farr's testimony that he had a conversation with you during the latter part of August, 1938, in your office, stating the substance of that conversation, and asking you if you were present during the testimony, and you said you were. You said you had the conversation with him, but you thought it was sometime in September, near the middle of September.

I then asked you where the conversation took

(Testimony of Gordon L. Hammond.)

place, and you testified it was in your office at the plant.

I then asked you who was present besides yourself and Farr. I will now ask you, was Mr. Prior present at this conversation with Mr. Farr?

A. No, he was not.

Q. Who was present there besides yourself and Mr. Farr, if anyone? A. No one.

Mr. Wingrove: May the record show, Mr. Examiner, that that question was asked for the purpose of clearing up that record on page 2574 of yesterday's transcript at line 11?

Trial Examiner Lindsay: Yes. [2603]

Q. (By Mr. Wingrove) Mr. Hammond, you testified yesterday—withdraw the question.

You will recall that it was stipulated yesterday afternoon that four of the gins at the Boswell plant in Corcoran operated during certain stipulated periods in the fall of 1938. I will now ask you as to whether or not any of the four gins which operated during the fall of 1938, which we have been calling the 1938-39 season, operated more than one shift per day. A. No, they did not.

Q. They all operated just one shift a day, is that correct? A. One shift.

Q. And that might have been—was that more or less than 12? A. More and less.

Q. Both? A. Yes.

Q. The hours operated depend upon the amount of cotton coming in, is that correct?

(Testimony of Gordon L. Hammond.)

A. That is right.

Q. Mr. Hammond, were you present during the time that Mr. L. A. Spear was testifying in this hearing? Did you hear his testimony?

A. I heard some, yes. [2604]

Q. Mr. Spear testified, in substance, that he had a conversation alone with you on the afternoon of November 19, 1938, and that you asked him to drop the union business and come back to work and he replied that he couldn't come back unless the other boys could come back; and that you stated that if the company recognized the union it would cause friction and that the boys had formed an organization the night before.

Do you recall that testimony?

A. I believe so.

Q. Did you have any such conversation with Mr. Spear at that time?

A. I had a conversation with him but not just as that says.

Q. Did you ever make those statements or any similar statements either in substance or effect to Mr. Spear at any time?

Mr. Mouritsen: I will object to this upon the ground that the witness indicated there was a conversation at that time. The proper method is to——

Trial Examiner Lindsay (Interrupting): Sustained.

Mr. Wingrove: He said "not to that effect."

(Testimony of Gordon L. Hammond.)

Trial Examiner Lindsay: Let him tell what the conversation was.

Mr. Wingrove: Very well.

Q. Will you kindly state the conversation that you did have—withdraw the question. [2605]

You say you did have a conversation with Mr. Spear on November 19, 1938? A. I did.

Q. Where was the conversation held?

A. It was in my office at the plant.

Q. What time of day was it, do you recall?

A. Oh, it was somewhere near 3:00 o'clock in the afternoon.

Q. Who was present besides yourself and Mr. Spear if anyone?

A. Well, there was two or three in and out. There was no one, I believe, heard the conversation that we had.

Q. Will you kindly state the substance of the conversation that you had with Mr. Spear at that time and which he had with you?

A. I asked Mr. Spear to forget his affiliations with the union and I would forget Boswell Company; that I would like to know what he thought was the cause of the difficulty they had the day before.

He told me when he came to work that morning some one of them—he didn't say who or I don't believe I asked him—who told him that they were going to have a meeting at 10:00 o'clock and that he said he told them it was fine, that he thought they were

(Testimony of Gordon L. Hammond.)

going to ask him or talk to him about the union.

When they got together they asked him so many questions [2606] and so fast he couldn't answer them and someone in the crowd, after they got to where he couldn't answer the questions, said, "Let's throw him out," and they proceeded to do so.

He told me that he didn't much blame them for doing what they did, he didn't know much about the union anyway, and that he was glad they did do what they did.

Q. Did he make any statement as to whether or not there had been any violence?

A. Well, he said there was no one hurt. I don't know whether he called it "violence" or "anyone hurt."

Q. Was that the substance of your conversation with him at that time? A. Yes.

Q. How did you happen to have this conversation with Mr. Spear on November 19th?

A. I asked Mr. Hugh Greer to tell Mr. Spear, when he went home to lunch, if he could come down I would like to talk to him.

Q. And pursuant to that request Mr. Spear called and you talked with him, is that correct?

A. That is right.

Q. Now, during the course of that conversation did you ask Mr. Spear to drop the union business and come back to work? A. No, I did not.

Q. Did he state to you at that time that he

(Testimony of Gordon L. Hammond.)

wouldn't come [2607] back to work until the other boys could come back?

A. No, he didn't.

Q. Did you tell him that if the company recognized the union it would cause friction?

A. No. We didn't discuss the union on that line at all.

Q. Did you tell him that the boys had formed an organization the night before, referring to the boys in the plant?

A. No, I did not.

Q. What was your purpose in calling Mr. Spear in so you could talk with him, Mr. Hammond?

A. I wanted to find out just what caused the trouble and difficulty the day before. [2608]

Q. Do you recall Mr. Spear's testimony to the effect that the last conversation he had with you was when he went to get his tool box in the fore part of December, 1938, and that you said at that time that he could come back to work, but he said he wouldn't come back under those conditions, meaning that he would have to drop the Union?

Do you recall that testimony?

A. Yes, sir, I do.

Q. Did you have any conversation with Mr. Spear during the fore part of December, 1938, in which you made any such statements?

A. On or about the 9th of December, I did.

Q. Well, did you make the statements in the conversation on December 9th?

A. I didn't make them.

(Testimony of Gordon L. Hammond.)

Q. Will you kindly state where the conversation of December 9th took place?

A. I met Mr. Spear between the office and the scale house. He told me that he left some tools out of his box.

Q. Just a moment. I want to ask you if there was anybody else present?

A. No, there was not.

Q. Very well. Go ahead and state what the conversation was between the two of you.

A. He told me he left some of his tools out of his box on the [2609] day he left on November 18th, and he would like to gather them up, put them in his box. I told him I would go with him.

I asked him then—I first told him we would have some more cotton to gin on the Number 1 gin, and I asked him if he were coming back, or they were coming back to go to work. He said he didn't know. He said he didn't think that he would because he was planning on making a crop. He said that Mr. Farr was planning on making a crop and that in the last meeting he was in with them—that had been over a week ago, he said—that Mr. Prior had taken it all out of their hands, and he didn't know what they were going to do. He also said that Mr. Prior told *he* had a job for Mr. Martin, two of the Ely boys and Mr. Johnston down South the first of January, and that he didn't know what the other boys were going to do.

(Testimony of Gordon L. Hammond.)

Q. Was that the substance of the conversation at that time between yourself and Mr. Spear?

A. That is, as well as I remember it.

Q. Now, at the time of this conversation on or about December 9th, 1938, Mr. Hammond, did you tell Mr. Spear that he could come back to work?

A. Yes, I did.

Q. Did you tell him that he would have to drop the Union? A. No, I did not.

Q. Or did you make any statement—did he tell you that he [2610] wouldn't come back under the same conditions, or words to that effect?

A. No.

Q. Meaning that he would have to drop the Union? A. He did not.

Q. Now, did you have any further conversation with Mr. Spear after this one of December 9th, 1938, which you have just testified to?

A. Yes, I did.

Q. When was it?

A. That was on or about the 19th or 20th of December, 1938.

Q. Where did this conversation take place?

A. He came down after his tool box and that was—I went with him over to the gin and helped him get his tool box and put it in the car.

Trial Examiner Lindsay: Haven't we just gone over that?

Mr. Wingrove: This is a further conversation.

Q. So you were helping him, going over to help

(Testimony of Gordon L. Hammond.)

him get his tool box, and was that where the conversation took place, while you were enroute?

A. Yes, it was there and over at the gin, Number 1 and 2 gin.

Q. Was anyone else present besides yourself and Mr. Spear? A. No, there was not.

Q. What, if anything, was said by you and Mr. Spear at that [2611] time?

A. Well, I asked him if he had found any land yet. He said that he hadn't made a deal for any, but he and Mr. Farr were looking at some land together to make a crop.

Q. Now, I would like to have you clear up one point, Mr. Hammond.

You testified that on or about December the 9th, Mr. Spear came back to gather up and did gather up some of his tools? A. He did, yes.

Q. What did he do with those tools which he gathered up at that time?

A. He put them in his tool box.

Q. Did he take his tool box away?

A. No, he did not.

Q. And then you say he came back about a week or ten days later, is that correct? A. Yes.

Q. And got his tool box?

A. That is right.

Q. That is the time you had that last conversation with him?

A. (Nodding head affirmatively.)

Q. Prior to November 18th, 1938, did Mr. Spear

(Testimony of Gordon L. Hammond.)

ever say anything to you about the condition of his health? A. Yes, he did. [2612]

Q. How long before November 18th? Can you fix the time, please?

A. Well, just a few days.

Q. And where did the conversation take place?

A. Number 1 gin.

Q. Who was present besides yourself and Mr. Spear, if anyone?

A. There were two or three others in the plant. I don't think that there was anyone could hear the conversation on account of the machinery.

Q. Will you kindly state the substance of the conversation between yourself and Mr. Spear at that time?

Mr. Mouritsen: I will object to the conversation on the ground it is incompetent, irrelevant and immaterial, and does not tend to prove or disprove the issues of this case.

Trial Examiner Lindsay: May I have the question?

(The record referred to was read by the reporter, as set forth above.)

Mr. Wingrove: I think it is material and proper rebuttal, Mr. Examiner, for the reason that Mr. Spear testified, I believe, on his direct examination, that he had to go to see a doctor immediately following the incident of November 18th.

Trial Examiner Lindsay: He may answer.

(Testimony of Gordon L. Hammond.)

Q. (By Mr. Wingrove) Do you have the question in mind, Mr. Hammond? [2613]

A. I don't believe I do well enough to answer.

(The record referred to was read by the reporter, as set forth above.)

The Witness: He said he hadn't been feeling very well. He had told me that two or three different times at the same place. He also said he had been to see a doctor, or was agoing on two different occasions, the week previous or it may have been the same week, just a few days before.

Q. He made that same statement to you on two different occasions, or told you he had gone to see a doctor on two different occasions?

A. He told me he was going or had been. He talked about it twice.

Mr. Mouritsen: I move to strike the previous answer upon the ground it is not responsive. It is not giving the conversation that took place at the time, for which the foundation was established.

Trial Examiner Lindsay: Yes.

Mr. Mouritsen: The second question, the question just asked, therefore, is objectionable as it is leading and suggestive.

Mr. Wingrove: I want to clear up the statement.

Trial Examiner Lindsay: You better——

Mr. Wingrove (Interrupting): I will ask him the further question about the earlier conversation. [2614]

Q. Now, you stated that you had a conversation

(Testimony of Gordon L. Hammond.)

with Mr. Spear on two different occasions in which he spoke something about going to see a doctor, or had been to see a doctor.

Is that correct, Mr. Hammond? A. Yes.

Q. Now, this occasion you have just finished testifying to, as I understand it, was two or three days before November 18th, is that correct?

A. The last one.

Q. Now, when was the other occasion before November 18th?

A. It could have been three or four days previous to that.

Q. And where did that conversation take place?

A. At the same place.

Q. Who was present besides yourself and Mr. Spear, if anyone? A. No one.

Q. And what was stated at that time between yourself and Mr. Spear?

A. He said he hadn't been feeling very well, and was either going to see a doctor that night, or had been the night before, the evening before.

Q. Did you ever have any conversation with Mr. H. N. Wingo following the time that he left the plant on November 18th, 1938?

A. One time. [2615]

Q. When was it?

A. Oh, it was on or about December 2nd or 3rd, 1938.

Q. And where was this conversation held, or this meeting held?

(Testimony of Gordon L. Hammond.)

A. In the hallway in the office there at the plant.

Q. Who, if anyone, was present in addition to yourself and Mr. Wingo?

A. No one. I met him there in the hall.

Q. Will you kindly state the substance of the conversation which took place between yourself and Mr. Wingo?

A. He asked me if I knew whether he had a check there or not. I told him I thought so, and went in and got a check for him. I asked him what they were going to do, if he was coming back to work. He said he didn't know. He said he was sorry that this happened and he had been misinformed.

Q. Was that all of the conversation that occurred at that time? A. That was all.

Q. Mr. Hammond, were you present and did you hear the testimony which was given in this present hearing by Mr. Winslow?

A. Yes. I heard some of his testimony. I don't know that I heard it all.

Q. I will ask you if you were present when Mr. Winslow testified in substance that about the first of the year 1936 he had a conversation with you in the seed house with regard to his [2616] obeying orders from Tom Hammond, and that you told him that you expected the men to carry out orders from Joe, Julius or Tom Hammond.

Do you recall that testimony?

A. Yes, I do.

(Testimony of Gordon L. Hammond.)

Q. Did you have any such conversation with Mr. Winslow? A. No.

Q. At any time did you make those or similar statements?

A. No, I never did at any time.

Q. Mr. Hammond, shortly prior to the time that the mill opened on the last part of—I believe—I will give you the exact date here—withdraw the question and I will reframe it.

Prior to the time that the mill opened on October 24th, 1938, did you circulate among the men at the plant a list with regard to the hours which were to be worked at the mill? A. Yes, I did.

(Discussion outside the record.) [2617]

Mr. Mouritsen: Mr. Examiner, I believe that on page 1188 of the official transcript you will find that Respondent Boswell's No. 8 was admitted—was received in evidence.

Trial Examiner Lindsay: Yes, it has been received.

Q. (By Mr. Wingrove) Mr. Hammond, I will hand you a document marked Respondent Boswell's Exhibit No. 8 and ask you as to whether or not that is the list you refer to as having been circulated amongst the men regarding the work in the mill.

A. Yes, that is.

Q. I will ask you to look at this document and state as to whether or not Mr. Winslow signed that.

A. (Examining document) Yes, he did.

(Testimony of Gordon L. Hammond.)

Mr. Mouritsen: May I have that question?

Trial Examiner Lindsay: Yes.

The question was to the effect as to whether Mr. Winslow signed that.

Mr. Mouritsen: I will object to that as calling for hearsay and something beyond the witness' knowledge.

Q. (By Mr. Wingrove) Did Mr. Winslow sign that in your presence, Mr. Hammond?

A. He did.

Q. Very well.

Do you recall approximately what date it was that Mr. Winslow signed Respondent Boswell's Exhibit No. 8? [2618]

A. It was on or about the 19th or 20th of October.

Q. 1938? A. Yes.

Q. At the time of his signing that list, Respondent Boswell's Exhibit No. 8, did you have any conversation with Mr. Winslow about it?

A. Not anything further than I asked him——

Q. (Interrupting): Just answer yes or no, please. A. Yes.

Q. Where did the conversation take place?

A. It was over around No. 1 and 2 gin.

Q. Who, if anyone, besides yourself and Mr. Winslow were present?

A. I do not recall.

Q. Will you kindly state the substance of the conversation? What you said to him and what he said to you.

(Testimony of Gordon L. Hammond.)

A. Well, I told him we only had a few days' milling to do and some of the boys wanted to work 12 hours and maybe some would rather work 8, and if he would rather work 8, why, sign where the place is set out if he wanted to work 8 hours, or sign if he would rather work 12.

And he said he would rather work 12. And I asked him not to sign for 12 just because some of the others did if he would rather work 8.

Q. Is that all of the conversation? [2619]

A. That is all.

Q. Mr. Hammond, were you present and did you hear Mr. Andrade's testimony? A. Yes.

Q. Do you recall his having testified that in October of 1938 Ygnacio Galvan told him, Prior, and Martin, that he, Galvan, had been told by you, Gordon Hammond, that he would lose his job if he had anything to do with the union? Do you recall that testimony? A. I do.

Q. Did you tell Mr. Ygnacio Galvan in October of 1938 that he would lose his job if he had anything to do with the union? A. I did not.

Q. Did you ever make a similar statement to him at any other time? A. I never have.

Q. Were you present during the time that Mr. L. E. Ely was testifying in this proceeding? Did you hear his testimony? A. Yes, I did.

Q. Do you recall his testimony to the effect that he talked with you between 7:00 and 8:00 o'clock p. m., on the evening of November 18, 1938, I be-

(Testimony of Gordon L. Hammond.)

lieve, somewhere out in front of the office or over toward the yard and that Mr. Workman and Mr. Parrish were present? [2620]

A. Yes, I do.

Q. Do you recall that incident? A. Yes.

Q. Did you have any conversation with Mr. L. E. Ely at that time?

A. Not that I can recall.

Mr. Mouritsen: Is counsel stating the record correctly on that? My recollection is that Parrish and this other man were not present, they were some distance away on the platform.

Could we have the record checked in that respect?

Mr. Wingrove: Page 1203, Mr. Mouritsen. I believe the testimony was that Mr. Hammond was standing nearby.

Trial Examiner Lindsay: Let's read it.

Mr. Wingrove: I am reading from page 1203 of the transcript, line 22.

Question, I believe, by Mr. Mouritsen:

"Q. Now, did you have a conversation with Gordon Hammond on or about November 18, 1938?

"A. Yes. It was in the afternoon or the evening.

"Q. Approximately what time in the evening?

"A. Between 7:00 and 8:00 o'clock.

"Q. And where did the conversation take place?

"A. Between the J. G. Boswell office and the oil mill.

"Q. That is, out at the J. G. Boswell plant, is that [2621] correct?

(Testimony of Gordon L. Hammond.)

“A. Yes.

“Q. Was anyone else present other than yourself and Gordon Hammond at that time?

“A. The engineer, Workman, Frank Price”—we have here but I am confident the name was Parrish—“that is all I remember now that was there.

“Q. Yes. Did you observe in and about the office of the plant a number of the other employees of the company? A. Yes.

“Q. Approximately how many?

“A. Well, 70 or 80.

“Q. Well, will you state what conversation you had with Gordon Hammond on that occasion?

“A. Well, I told him that my thumb was getting better and I thought I soon would be ready to go back to work.

“And he told me that—to see Tommy, that Tommy was inside of the office.

“Q. Do you recall anything further that was said?

“A. Not by him.

“Q. Well, at or about that time did you hear any other employee of the company say anything?

“A. Yes.

“Q. Who was this other person?

“A. Frank Parrish. [2622]

“Q. And who is he?

“A. He is the blacksmith, I think, is what job he holds at the plant in Corcoran of the J. G. Boswell Company.

(Testimony of Gordon L. Hammond.)

“Q. What did Parrish say to you?

“Mr. Clark: Do I understand, Mr. Examiner, that this conversation is in the presence of Gordon Hammond? The conversation between the employee Parrish? If it isn’t, I want to object to it on the ground it calls for hearsay.

“Mr. Mouritsen: I will establish that.

“Q. At the time when you said anything to Parrish or Parrish said anything to you, was Gordon Hammond present?

“A. Yes.

“Q. How far away from you was he at the time when Parrish said something to you or you said something to Parrish?

“A. He could have been two or three yards.”

Mr. Mouritsen: That covers that.

Mr. Wingrove: Is that cleared up?

Mr. Mouritsen: Yes.

Q. (By Mr. Wingrove) Now, Mr. Hammond, after having heard the testimony read, will you kindly state as to whether or not you had any conversation with L. E. Ely on the evening of November 18, 1938?

A. I don’t remember of any, not at the time he has set anyway, because he wasn’t there at that time. If any, it was [2623] a little later. I don’t say that I did not now, but I don’t believe I did.

Mr. Mouritsen: May I have that answer re-read?

Trial Examiner Lindsay: Yes. Read the answer.

(Testimony of Gordon L. Hammond.)

(The answer referred to was read by the reporter, as set forth above.)

Q. (By Mr. Wingrove) You state you might have had a conversation but it was a little later in the evening?

A. I could have. I don't remember of any conversation with him at all that afternoon.

Q. Do you recall having had a conversation with him at any time in which he stated in effect that his thumb was getting better and he would soon be ready to go back to work?

A. No, I don't recall any.

Q. Mr. Hammond, were you present during the time that Mr. James W. Gilmore was testifying in this proceeding?

A. Yes.

Q. Did you hear his testimony?

A. I did.

Q. You will recall that he testified that in June 1938 he talked with you and that you asked him if he had them all signed and he said—and you said that he probably would have them all signed up if he kept sneaking around. Do you recall that incident in the testimony?

A. I do. [2624]

Q. Did you ever have any such conversation with Mr. Gilmore?

A. I did not, no.

Q. Either at that time or any other time?

A. No.

Q. He also testified that some time in July, 1938, after the mill started, he talked with you between the main office and the scales office and asked you if his work was satisfactory and if there was any

(Testimony of Gordon L. Hammond.)

more work for him; that you stated there wasn't anything to do, but you wouldn't exactly say it was because of the union.

Do you recall his testimony to that effect?

A. Yes.

Q. Did you have any such conversation with Mr. Gilmore? A. No, I did not.

Q. Either in July or at any other time?

A. No.

Q. Now, what conversations, if any, did you have with Mr. Gilmore during the—say, between May and July, the middle of July, 1938?

Mr. Mouritsen: I will object to the form of the question.

Trial Examiner Lindsay: Just a moment.

I am going to sustain that objection, and you re-frame the question.

Q. (By Mr. Wingrove) Did you have a conversation with Mr. [2625] Gilmore during the month of May 1938, Mr. Hammond?

A. Yes, I did.

Q. What time during the month of May, to the best of your recollection?

A. Well, he was at work during the 2nd through the 17th of May, and I talked to him four times in the morning.

Q. Now, do you recall any of the conversations which you had? Can you identify any of them as to time?

A. One only as to time, on the 17th of May.

(Testimony of Gordon L. Hammond.)

Q. Where was the conversation held?

A. That was between—near the mill—just outside of the mill, between the mill and the office.

Mr. Mouritsen: Between the mill and the office?

The Witness: Yes.

Q. (By Mr. Wingrove) Who, if anyone, was present besides yourself and Mr. Gilmore?

A. I don't believe there was anyone.

Q. Will you kindly state the substance of the conversation?

A. He asked me if he could get his check that day, that he was fixing to go to Oregon and that he had a job up there for \$6 a day. I told him I would get it for him as soon as he would come to the office, which would be just after 8:00 o'clock. [2626]

Q. Now, this conversation you fix as about May 17th, 1938? A. Yes.

Q. Now, subsequent to that date, did you have a further conversation with Mr. Gilmore?

A. Yes, he told me——

Q. (Interrupting): Well, just answer yes or no. A. Yes.

Q. When did this further conversation take place?

A. It could have been just after the first of September, or it could have been around the 8th or 10th, something around there.

Mr. Mouritsen: And what is the year?

Q. (By Mr. Wingrove): 1938? A. Yes.

(Testimony of Gordon L. Hammond.)

Q. And where did the conversation take place?

A. It was between the Number 1 seed house and the oil mill.

Q. Who, if anyone, was present besides yourself and Mr. Gilmore?

A. I don't know if there was anyone. There could have been, but I don't remember anyone.

Q. Will you kindly state the substance of the conversation?

A. He said that the dust was getting the best of him, and he didn't think that after we got through milling, or the mill closed down, he would work in the mill any more. [2627]

Mr. Mouritsen: This conversation was with Gilmore, isn't that right?

Mr. Wingrove: Yes.

Q. Was this 1938 or 1937 you are talking about, Mr. Hammond? A. It was in May, 1938.

Trial Examiner Lindsay: Just a minute. Off the record.

(Discussion outside the record.)

Trial Examiner Lindsay: Will you read back the testimony, starting several questions back, Mr. Reporter?

(The record referred to was read by the reporter, as set forth above.)

Q. (By Mr. Wingrove): Mr. Hammond, can you straighten this up? You testified a moment ago you were talking about a conversation two or three days before May 17th.

(Testimony of Gordon L. Hammond.)

A. This was the only one.

Trial Examiner Lindsay: Was it before the 17th of May, or was it in September?

The Witness: It was in May.

Trial Examiner Lindsay: And you didn't have any talk in September?

The Witness: No; he wasn't there in September.

Q. (By Mr. Wingrove): You say you had a conversation with him before May 17th, as well as one on May 17th, is that correct?

A. That is right. [2628]

Q. When did the conversation before May 17th, 1938 take place?

A. I can't fix the date. It was between the 2nd and the 17th.

Q. And where did it take place?

A. It was between the oil mill and Number 1 seed house.

Q. And was anyone present besides yourself and Mr. Gilmore? A. No one that I can recall.

Q. Now, will you kindly state the substance of that conversation?

A. He said that the dust was about to get the best of him, and he didn't think he would work any more after the mill closed down at that time, which would be just a few days.

Q. Is that all that was said?

A. That is all I remember.

Q. Now, did you have any conversation with Mr. Gilmore after May 17th, 1938?

(Testimony of Gordon L. Hammond.)

A. Yes.

Q. When?

A. On the morning of the 14th or 15th of June, 1938.

Q. And where did that conversation take place?

A. In my office at the plant.

Q. Who, if anyone, was present besides yourself and Mr. Gilmore? A. No one.

Q. Will you kindly state the substance of that conversation? [2629]

A. He came in my office and asked me if I would loan him a trailer to move. I told him I would.

Q. Did he tell you where he expected to move?

A. Yes, he said he was going to move to Tulare.

Q. And did you loan him the trailer?

A. I did.

Q. I will ask you, Mr. Hammond, to state as to whether or not Mr. Joe Briley has continued to work at the plant since the time he left on November 18th, 1938? A. Yes, he has.

Q. How long was he away after November 18th, do you recall?

A. Well, I believe he was back the next day. I don't know if I can give the dates.

Q. Did he come back and ask you as to whether or not you had work for him? A. Yes.

Q. And has he worked since that time?

A. Yes, he has.

Q. Steadily, or just at various intervals when work was available?

(Testimony of Gordon L. Hammond.)

A. As work was available.

Q. You stated, I believe, Mr. Hammond, that Mr. Gilmore worked to May 17th, 1938, is that correct? A. Yes.

Q. Was that the last time that he worked for the Company? [2630] A. Yes.

Q. Has he ever applied for work since that day? A. No, he has not.

Q. You testified yesterday, Mr. Hammond, that you had notified both Mr. W. R. Johnston and Mr. Stephen Griffin on the morning of November 17th, 1938, that there would be no more work for them after that day for a few days, is that correct?

A. That is right.

Q. Will you kindly explain why these two men were laid off on November 17th, 1938?

A. We didn't have enough work to carry them.

Q. What kind of work had they been engaged in, what were they doing—withdraw the question.

What type of work were they doing on November 17th, 1938?

A. They were doing odd jobs, three or four jobs.

Q. What type of work had they been doing before that, a few days before that?

A. The same kind of work all along.

Q. Had they been handling any of the planting seed? A. Yes, they had.

Q. About how much of their time had they been devoting to the handling and hauling of planting seed?

(Testimony of Gordon L. Hammond.)

Mr. Mouritsen: Does this refer to Steve Griffin and W. R. Johnston?

Mr. Wingrove: I will ask the question—both of them. [2631]

Mr. Mouritsen: I will object to any question in that respect regarding Steve Griffin. We went into that very exhaustively yesterday with some time cards that took up some time to put in the record.

Mr. Clark: Yes. Those cards indicate what work Mr. Griffin did, exactly.

Trial Examiner Lindsay: Yes.

Mr. Wingrove: I will eliminate Mr. Griffin then.

Q. I will ask you approximately what portion of his working time was devoted by Mr. Johnston to the hauling or sacking of planting seed during the time immediately prior to November 17th, 1938?

A. Well, I don't believe I can say just what proportion of the time. He helped haul seed; he helped haul bales. He helped tie up cotton. He worked just wherever we had work for him, anywhere around the plant, in the yard; helped load cotton.

Mr. Wingrove: May I have just a moment?

Trial Examiner Lindsay: We will take a recess now. A ten minute recess.

(At this point a short recess was taken, after which proceedings were resumed as follows:)

Trial Examiner Lindsay: Hearing called to order. You may proceed.

(Testimony of Gordon L. Hammond.)

Q. (By Mr. Wingrove): Am I correct in my understanding, Mr. [2632] Hammond, that Mr. W. R. Johnston, during the time immediately prior to the time he was laid off November 17th, 1938, had been doing just odd jobs about the plant?

A. Yes.

Q. And on November 17th, 1938, I believe the stipulation shows and you testified that practically all of the planting seed that was being laid aside for the 1939 season had been sacked and hauled, except there were a few sacks in the yard which hadn't been hauled. Is that correct?

A. Yes, practically all.

Q. What was the reason, then, that Mr. Johnston was laid off on November 17th, 1938?

A. We didn't have work that would justify keeping him.

Q. Was Eugene Clark Ely discharged on or about January 30th, 1939, Mr. Hammond?

A. No.

Q. He left work on that date, did he not?

A. I believe that is about the date, yes.

Q. Will you kindly state the circumstances under which he left work?

Mr. Mouritsen: I will object to that as calling for a conclusion of the witness. If this witness had any conversation with him, let's have the conversation.

Mr. Wingrove: Well, I will withdraw the question and re-frame it. [2633]

(Testimony of Gordon L. Hammond.)

Q. Did you have any conversation with Mr. Eugene Clark Ely on January 30th, 1939?

A. Yes, I did.

Q. And where was the conversation?

A. That was in the front office, the front room of the office of the plant.

Q. Who, if anyone, was present besides yourself and Mr. Ely?

A. I believe Mr. Carr was there. I don't know if he heard the conversation or not.

Q. Will you kindly state the substance of the conversation?

A. I was talking on the telephone at the time he came in, I believe, when I first noticed him, and when I got through he said that Mr. Lloyd—he said that there wasn't any more work. I told him then we would go load some cotton, and went on out the front door across the road to where we were loading; and when I got over there he wasn't with me. That was the only conversation we had.

Mr. Mouritsen: May I have that last part of the answer? I couldn't hear it.

Trial Examiner Lindsay: Yes. Read the answer.

(The answer referred to was read by the reporter, as set forth above.)

Q. (By Mr. Wingrove): Do I understand, then, Mr. Hammond, that you did have further work available loading cotton, and you asked him to come load cotton? [2634]

(Testimony of Gordon L. Hammond.)

Mr. Mouritsen: I object to this as leading the witness and already asked and answered.

Trial Examiner Lindsay: Yes. The answer is already in.

Q. (By Mr. Wingrove): Did Mr. Ely go to work then loading any cotton?

A. No, he didn't.

Q. What did he do, if you know?

A. I don't know.

Q. Has he ever applied for work since that time?

A. No, he hasn't.

Q. Mr. Hammond, I believe you already testified that after Mr. Gilmore stopped working for the Company on May 17th, 1938, he never applied for work after that date; is that correct?

Mr. Mouritsen: Objected to as calling for a conclusion of the witness.

Mr. Wingrove: I believe he did, but I wanted to make sure. [2635]

Mr. Mouritsen: If he has, it is already in there.

Trial Examiner Lindsay: If he did or did not apply to this witness, that is the question.

Mr. Mouritsen: Surely. That is the proper question.

Mr. Wingrove: I will reframe the question.

Q. Did Mr. Gilmore ever apply to you for work after he left the employ of the company on or about May 17, 1938? A. No.

Q. Did Mr. W. R. Johnston ever apply to you for work after he left the employ of the company on or about November 17, 1938?

(Testimony of Gordon L. Hammond.)

A. No, he did not.

Q. Did Stephen J. Griffin ever apply to you for work after he left the employ of the company on or about November 17, 1938?

A. No, he did not.

Q. Did Boyd Ely ever apply to you for work after he left the employ of the company on or about November 15, 1938?

A. No.

Q. Did Walter Winslow ever apply to you for work after he left the employ of the company on or about November 15, 1938?

A. No, he did not.

Q. Did E. L. Ely—I withdraw that question.

Did George J. Andrade ever apply to you for work after the time that he left the plant on or about November 18, [2636] 1938?

A. No, he did not.

Q. Did O. L. Farr ever apply to you for work after the time he left the employ of the company on or about November 18, 1938?

A. No.

Q. Did R. K. Martin ever apply to you for work after the time he left the employ of the company on or about November 18, 1938?

A. No, he did not.

Q. Did E. C. Powell ever apply to you for work after the time that he left the employ of the company on or about November 18, 1938?

A. No, he did not.

Q. Did L. A. Spear ever apply to you for work

(Testimony of Gordon L. Hammond.)

after the time that he left the employ of the company on or about November 18, 1938?

A. No, he did not.

Q. Did H. N. Wingo ever apply to you for work after the time he left the employ of the company on or about November 18, 1938?

A. No, he did not.

Q. Mr. Hammond, you testified yesterday that July was the first time you had heard any report at all about the union. Do you remember that testimony? [2637]

A. I do.

Q. At that time had you heard any report or rumor that Mr. Gilmore was engaged in union activities?

A. No, I never did.

Mr. Wingrove: May I have just a moment, Mr. Examiner, please?

Trial Examiner Lindsay: Yes.

(Conference between counsel.)

Q. (By Mr. Wingrove): Mr. Hammond, have you made any investigation of the company's records for the purpose of ascertaining the date on which Mr. Vernon M. Rood was first employed by the company?

A. Yes, I have.

Q. Mr. Hammond, I will hand you a document and ask you to kindly state if you have seen that document before.

A. (Examining document.)

Trial Examiner Lindsay: Have it marked for identification.

(Testimony of Gordon L. Hammond.)

Mr. Wingrove: I will ask that all three of these documents which I hold in my hand be marked for identification as Respondent Boswell's Exhibits next in order.

(Thereupon the documents above referred to were received and marked for identification as Respondent Boswell's Exhibits 23(a), (b), and (c).)

Q. (By Mr. Wingrove): I will hand you Respondent Boswell's [2638] Exhibit 23(c)—withdraw that.

I will hand you Respondent Boswell's Exhibit No. 23(a) for identification and ask you to state, Mr. Hammond, what that exhibit is, that paper is.

A. That is a payroll of Vernon M. Rood.

Mr. Mouritsen: May I have it just a little louder, please?

Trial Examiner Lindsay: Speak up, will you, Mr. Hammond?

The Witness: Yes.

Trial Examiner Lindsay: I am sitting right here and I didn't even get that name.

The Witness: That is the payroll, work sheet of Vernon M. Rood for 1936.

Q. (By Mr. Wingrove): That is the social security record? A. It is.

Q. Where did you obtain that information, Mr. Hammond? A. Yes.

Q. I say where did you obtain it?

A. Where? From the Los Angeles office.

(Testimony of Gordon L. Hammond.)

Q. And were you informed that that was the original social security record for Mr. Rood during the period therein specified? A. Yes.

Q. And you obtained that from the Los Angeles office yesterday? [2639]

A. Yes.

Mr. Wingrove: At this time I will offer Respondent Boswell's Exhibit 23(a) for identification in evidence.

Mr. Mouritsen: May I ask a couple of questions on voir dire?

Mr. Wingrove: Surely.

Mr. Mouritsen: Did you make any request for an original record from the Los Angeles office?

The Witness: Yes, I did.

Mr. Mouritsen: And you requested that they send you the original record of Vernon M. Rood for 1936, is that correct?

The Witness: No, for back records. I didn't know. I knew he had worked but I didn't know whether it was '37 or '36.

Mr. Mouritsen: No objection.

Trial Examiner Lindsay: Boswell's 23(a) received in evidence.

(Thereupon the document above referred to was received in evidence and marked Respondent Boswell's Exhibit No. 23(a).)

NAME

VERNON M. ROOD

EMPLOYEE NO.

ADDRESS

ADDRESS

CHANGE

DATE

DATE

DATE

EMPLOYMENT CONTRACT

MADE IN STATE OF

PLACE OF BIRTH

TYPE

OF WORK

WAREHOUSE

LOVELAND, COLO

WAREHOUSE

RATE \$ 30 PER HR.

WORK DONE IN STATE OF

CALIFORNIA

AGE 29

DATE BECAME SS

1971

STEADY

TEMPORARY

FULL

TIME

WORK DONE IN DISTRICT

PHONE

MARRIED

SINGLE

YEARS

IN U.S.

TIME

EST.

COR

DATE PERIOD ENDS	WORKED		TIME LOST		SALARY OR WAGES		OTHER COMPENSATION		ALLOWANCES OR EXPENSES		UNEMPLOY. INSURANCE		OLD-AGE ANNUITY		1
	DATE	MES.	TIME	WHY	REF.	AMOUNT	REF.	AMOUNT	REF.	AMOUNT	%	AMOUNT	%	AMOUNT	
1-9		99			1	29.70						13			
1-16		77			2	23.10						10			
1-23		77			3	23.70						11			
1-30		77			4	23.10						10			
2-6		77			5	23.10						10			
2-13		77			6	21.60						10			
2-20		74			7	22.20						10			
2-27		65			8	19.50						09			
3-5		77			9	23.10						10			
3-12		68			10	20.40						09			
3-19		66			11	19.80						09			
3-26		44			12	13.20						06			

RECOMMENDED FOR RE-EMPLOYMENT, YES-NO

DATE RE-EMPLOYED

REGISTERED WITH

PUBLIC EMPLOYMENT OFFICE

DISTRICT

CERTIFICATE

NO.

MEMO.

SUMMARY

CURRENT YR.

PRIOR YEARS

TOTAL EARNINGS

NO. OF WEEKS

WEEKLY

WEEKLY

WEEKLY

WEEKLY

WEEKLY

WEEKLY

WEEKLY

WEEKLY

WEEKLY

WEEKLY

WEEKLY

WEEKLY

WEEKLY

WEEKLY

WEEKLY

(Testimony of Gordon L. Hammond.)

Q. (By Mr. Wingrove) I will now hand you Respondent Boswell's Exhibit No. 23(b) for identification, and ask you to state what that document is, Mr. Hammond.

A. That is for the same purpose, for H. N. Smith.

Q. And did you obtain that social security record for H. N. Smith under the same circumstances that you obtained Boswell's [2640] Exhibit 23(a)?

A. I did.

Mr. Wingrove: I will offer Boswell's Exhibit No. 23(b) for identification in evidence.

Trial Examiner Lindsay: 23(b) received.

(Thereupon the document above referred to was received in evidence and marked Respondent Boswell's Exhibit No. 23(b).)

EMPLOYEE
S. S. ACCT. NO. 559-12-2184

PHONE _____ PHONE CHANGE _____ NO. OF DEPENDENTS 0
 FEMALE ☐ MARRIED ☐ SINGLE ☒ YEARS _____
 IN STATE _____ COLOR _____
 FULL TIME ☐ PART TIME ☐ DEPT. _____
 FULL-TIME WEEKLY HOURS _____

[illegible]

(Testimony of Gordon L. Hammond.)

Q. (By Mr. Wingrove) I will hand you Respondent Boswell's Exhibit 23(c) for identification and ask you to state what that is.

A. That is for the same, being Mr. Clark, Andrew Clark.

Q. And did you obtain the social security record for Mr. Andrew Clark, which you hold in your hand, under the same circumstances that you obtained Boswell's Exhibits 23(a) ?

A. Yes.

Mr. Wingrove: I will offer 23(c) for identification in evidence.

Trial Examiner Lindsay: 23(c) received.

(Thereupon the document above referred to was received in the evidence and marked Respondent Boswell's Exhibit No. 23(c).)

COMPANY
EMPLOYEE NO.EMPLOYEE
S. S. ACCT. NO. 450-12-4298

NAME *Andrew Clark*
 ADDRESS *San Del Rosarian Calif.*
 ADDRESS
 CHANGE
 DATE OF BIRTH 2-3-97 PLACE OF BIRTH *Altoga Texas*
 DATE
 EMPLOYED
 EMPLOYMENT CONTRACT
 MADE IN STATE OF OCCUPATION RATE \$ WORK DONE IN STATE OF

PHONE
 CHANGE
 MALE ☒ FEMALE ☒ MARRIED ☒ SINGLE ☐ NO. OF DEPENDENTS
 AGE 40 BECOMES 65 YEARS IN STATE COLOR
 STEADY ☐ TEMPORARY ☐ TIME ☐ FULL-TIME
 WORK DONE IN DISTRICT DEPT. FULL-TIME WEEKLY HOURS

C 2 1 1	DATE PERIOD ENDS 12-37	WORKED		TIME LOST	PAY-ROLL RECORD				TOTAL TAXABLE EARNINGS	DEDUCTIONS			TAX STATUS	
		DAYS	HRS.		SALARY OR WAGES	OTHER COMPENSATION	ALLOWANCES OR EXPENSES	UNEMP. INS.		OLD-AGE ANNTY				
					REF.	AMOUNT	REF.	AMOUNT	REF.	AMOUNT	%	%		
1	6-30					1250		1150			67	28	11	SUBJECT TO STATE UNEMPLOYMENT INSURANCE
2	10-7					2270					30	23	WHY EXEMPT?	
3	14					2170					20	22	SUBJECT TO FEDERAL UNEMPLOYMENT INSURANCE	
4	21					2100					19	21	WHY EXEMPT?	
5	28					2100		8645			19	21	SUBJECT TO FEDERAL OLD-AGE ANNTY	
6	11-4					2100					19	21	WHY EXEMPT?	
7	11					2100					19	21	IN CASE OF ACCIDENT NOTIFY:	
8	18					2450					22	23	NAME	
9	25					2100		17375			19	21	ADDRESS	
10	12-2					2100					19	21	PHONE	
11	9					2100					19	21	RELATIONSHIP	
12	16					1925					17	19	RATE CHANGES	
13	23					2100					19	21	DATE	
14	25					1000					09	10	TYPE OF WORK	
15	31					2170		28190			20	22	Date Per	
16	1738												DATE	
17	-6					1820					18	18	REASON:	
18	14					2800					28	28	INELIGIBLE FOR UNEMPLOY COMPENSATION	
19	20					2940					29	29	REASON:	
20	27					2940					29	29	RECOMMENDED FOR RE-EMPLOYMENT, YES-NO	
21	2-3					2940					29	29	DATE RE-EMPLOYED	
22	10					2940					29	29	REGISTERED WITH PUBLIC EMPLOYMENT OFFICE	
23	17					735					07	07	DISTRICT CERTIFICATE NUMBER	
24	34					875		1774			09	09	MEMO	
25														
26														
27														
28														
29														
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53														

TAXABLE EARNINGS	UNEMP. INS.	OLD-AGE ANNTY
1ST QUARTER		
2ND QUARTER		
3RD QUARTER		
4TH QUARTER		
TOTALS		
SUMMARY	CURRENT YR.	PRIOR YEARS
TOTAL EARNINGS		
NO. OF WEEKS		
WORKED		
AVG. WEEKLY		
WAGE		
TOTAL		
HOURS WORKED		
AVERAGE		
WEEKLY HOURS		
HOURLY		
RATE EARNED		
UNEMPLOY. INS.		
TAX DEDUCTED		
FED. OLD-AGE		
TAX DEDUCTED		

(Testimony of Gordon L. Hammond.)

Q. (By Mr. Wingrove) Am I correct in understanding this, Mr. Hammond, that Mr. Rood was employed by the J. G. Boswell Company as early as January 1936?

Mr. Mouritsen: I object to the form of the question. It is immaterial whether Mr. Wingrove has any understanding [2641] in the matter or not. The facts are in and I understand that the exhibit is already in. We haven't contested the authenticity of the exhibit.

Mr. Wingrove: I will withdraw the question.

Q. Did Mr. Vernon M. Rood work for the J. G. Boswell Company as early as January 1936?

Mr. Mouritsen: I object to the question—

Mr. Wingrove (Interrupting): Or in January of '36?

Mr. Mouritsen (Continuing): —as better evidence is already before the Trial Examiner.

Trial Examiner Lindsay: Sustained.

Off the record.

(Discussion outside the record.) [2642]

Trial Examiner Lindsay: You may proceed.

Q. (By Mr. Wingrove) Mr. Hammond, I will ask you, then—I withdraw that question.

I will call your attention to Respondent Boswell's Exhibit 23-A, and to the fact that there is a notation on the top "Type of Work, Warehouse. Rate, 30 Per Hour," and I will ask you to explain the nature of the work which Mr. Rood was doing during that particular period of time in the warehouse, if you recall?

(Testimony of Gordon L. Hammond.)

A. (Examining document) It is just general work. It could be doing stacking or trucking, hand truck, or it could be sewing sacks.

Q. What I am particularly interested in, Mr. Hammond, is finding out as to whether or not that work referred to as work in the warehouse was work in connection with the oil mill at the plant, or whether it was in connection with some other operation?

A. Well, the warehouse and the oil mill are tied in together, not necessarily being in the mill alone, although the warehouse—the men employed in the warehouse are paid from the account of the oil mill. It would show——

Trial Examiner Lindsay (Interrupting): From the record that you now hold in your hand, can you specifically tell what particular type of work an individual was doing on a specific day? [2643]

The Witness: No, I couldn't. There are three or four things he could be doing.

Q. (By Mr. Wingrove) Well, is it your recollection, then, that this was in connection with work in connection with the oil mill when it says "Type of Work, Warehouse?" A. Yes.

Q. And the rate, "30 per hour," refers to 30 cents per hour, is that correct?

A. That is correct.

Q. Mr. Hammond, have you made any investigation for the purpose of ascertaining from the records when Mr. Y. Galvan was first employed by the J. G. Boswell Company?

(Testimony of Gordon L. Hammond.)

A. Our records don't show that far back. He went to work in——

Mr. Mouritsen (Interrupting): This is purely voluntary.

Trial Examiner Lindsay: Yes. Answer the question.

Did you make that investigation?

The Witness: I did.

Trial Examiner Lindsay: All right.

Mr. Wingrove: Excuse me a moment, Mr. Examiner.

(Conference between counsel.)

Q. (By Mr. Wingrove) Well, do you recall the date which you ascertained as being the first date Mr. Y. Galvan was first employed by the Company?

A. No, I don't have that date.

Q. I will hand you a paper, Mr. Hammond, and ask you as to [2644] whether or not that was a memorandum which you made at the time you investigated as to the dates of employment of Y. Galvan and various other employees?

A. (Examining document) Mr. Carr made this up.

Mr. Mouritsen: Now, may I ask if a memorandum referring to Y. Galvan is the only thing that appears on that memorandum?

Mr. Wingrove: I——

Mr. Mouritsen (Interrupting): Isn't it a matter of fact that it contains a list of some 13 or 14 employees?

(Testimony of Gordon L. Hammond.)

The Witness: Yes, or more.

Mr. Mouritsen: And isn't it a fact that the examination is only referring to one individual at this time, and counsel is showing the witness a memorandum of some 13 or 14 different employees?

Q. (By Mr. Wingrove) I desire to direct your attention more particularly, Mr. Hammond, to the name "Y. Galvan," which appears on the second line from the top of the sheet.

Mr. Mouritsen: I object to the showing to the witness of a memorandum at this time for the purpose of refreshing his memory when it hasn't been demonstrated that his memory has been exhausted in that regard. [2645]

Mr. Wingrove: Mr. Examiner, he testified he couldn't recall, and made the investigation, but couldn't recall the date. And I am now showing him the memorandum which he says he had made.

Trial Examiner Lindsay: Well, I would like to know where the memorandum comes from and how it was made.

Mr. Wingrove: Yes.

Q. Just explain to the Examiner, Mr. Hammond, how you happened to have that memorandum made.

A. That is as far back as 1936 as the records in the office show. Y. Galvan—he went to work for the company—

Trial Examiner Lindsay (Interrupting): Wait a minute. The question is, "Where did you get this

(Testimony of Gordon L. Hammond.)
information that is on that memorandum which you are now using to refresh your recollection?"

The Witness: From the Corcoran office.

Q. (By Mr. Wingrove) When did you have that memorandum prepared?

Mr. Mouritsen: I object to that as assuming facts not in evidence, namely, that the witness prepared it or has prepared it.

Mr. Wingrove: Pardon me. I understood the witness to state—and I am confident he did—that he had this prepared.

Trial Examiner Lindsay: Let's have the witness testify. [2646]

Mr. Wingrove: I will go over it again.

Q. Did you have someone in the J. G. Boswell Company office in Corcoran prepare that memorandum? A. I did.

Q. And who was it that you had that memorandum prepared by? A. Mr. Carr.

Q. Who is Mr. Carr?

A. He is one of the bookkeepers there in the office.

Q. And what instructions did you give him at the time of asking him to prepare the memorandum, if any?

A. I asked him to look up the dates of their beginning employment and the finish and the times that they were off between.

Mr. Mouritsen: May we have "they" explained? When "they" started and when "they" finished.

(Testimony of Gordon L. Hammond.)

Trial Examiner Lindsay: Yes, what do you mean by "they"?

The Witness: This list of names (indicating).

Q. (By Mr. Wingrove) And when was this memorandum prepared, Mr. Hammond? When did you get it from Mr. Carr?

A. Saturday afternoon.

Q. Last Saturday afternoon?

A. That is right.

Trial Examiner Lindsay: Now, off the record a minute.

(Discussion off the record.) [2647]

Q. (By Mr. Wingrove) Mr. Hammond, after referring to that memorandum——

Mr. Mouritsen (Interrupting): Mr. Examiner, at this time I am going to object to the witness refreshing his memory with such a memorandum. It is not a memorandum that was made by himself, and was not made at or about the time that such an incident occurred to which he is referring. It is, as I understand it, an excerpt from original records that are available. I submit that it is not a proper use of a memorandum for that purpose, refreshing his memory.

Trial Examiner Lindsay: May I see that just a minute?

(The document referred to was passed to the Trial Examiner.)

Trial Examiner Lindsay: For the time being,

(Testimony of Gordon L. Hammond.)

I am going to sustain the objection. You may go on further, Mr. Wingrove.

Mr. Wingrove: On the ground it is not the original record? Is that the ground?

Trial Examiner Lindsay: I did not say that. I say you may question him further.

Q. (By Mr. Wingrove) Mr. Hammond, you said Mr. Carr is one of the bookkeepers in the office of the J. G. Boswell Company plant?

A. Yes, sir, he is.

Q. And is he in charge of the payroll records of the plant?

A. Oh, I don't know if he is in charge. He helps with them. I think Mr. Brenes is in charge. [2648]

Mr. Mouritsen: Mr. Brenes?

The Witness: Yes.

Mr. Mouritsen: B-r-e-n-e-s?

The Witness: I believe so.

Q. (By Mr. Wingrove) Is Mr. Carr assistant bookkeeper, assistant to Mr. Brenes?

A. He assists, yes.

Q. And you asked him, as I understand, to check the payroll records in the office, did you not?

A. I did.

Q. As to these particular men whose names appear on this memorandum?

Mr. Mouritsen: I object to that as vague and indefinite. He is questioning regarding a number of men whose names are not before the hearing in that regard. We know nothing about these men whose names appear on it. I will object——

(Testimony of Gordon L. Hammond.)

Trial Examiner Lindsay (Interrupting): You have one individual.

Mr. Wingrove: I am directing attention to one individual, but Mr. Mouritsen raises the point that there are other names appearing on this memorandum.

Trial Examiner Lindsay: Just use the name you are working on now.

Mr. Wingrove: Very well.

Q. Did you instruct Mr. Carr to check the payroll records of [2649] Y. Galvan and give you a memorandum as to—showing what the records disclose with regard to the earliest date that Mr. Y. Galvan was employed by the Company and with regard to the nature of the work at which he was first employed? A. I did.

Q. And did Mr. Carr thereafter hand you this memorandum pursuant to those instructions?

A. Yes.

Q. And he handed it to you, as I believe you stated, last Saturday?

A. Saturday afternoon.

Q. And are the original records, payroll records of Mr. Y. Galvan contained in the Corcoran office where they are accessible to Mr. Carr, the assistant bookkeeper? A. Yes, they are.

Q. I will now ask you to state, Mr. Hammond, referring to this memorandum, as to when Mr. Y. Galvan was first employed by the J. G. Boswell Company?

Mr. Mouritsen: I will object to the witness be-

(Testimony of Gordon L. Hammond.)

ing given that memorandum for the purpose of refreshing his memory upon the ground it is an improper method of examining a witness. I want the record to show that the witness had the memorandum in his possession during the several minutes that we had a recess or an off-the-record discussion a few minutes ago.

Mr. Wingrove: That is an incorrect statement, because he [2650] didn't have it in his hand. Mr. Robinson brought it in here and gave it to me, and I didn't even show it to Mr. Hammond.

Mr. Mouritsen: I am not referring to the recess, but the off-the-record discussion we just had a few minutes ago, as the record will indicate.

Trial Examiner Lindsay: Yes, I understand what you meant.

Mr. Wingrove: I think, Mr. Examiner, the witness is entitled to refresh his memory from memoranda which he had prepared by a man in the office under his instruction, and from the records in the office.

Trial Examiner Lindsay: Off the record just a moment.

(Discussion outside the record.)

Q. (By Mr. Wingrove) I will ask you, Mr. Hammond, as to whether or not you furnished the information to the bookkeeper from which this memorandum was compiled?

A. I only furnished him with the names.

Q. No. I mean originally, did you furnish the

(Testimony of Gordon L. Hammond.)

information with respect to the time that Mr. Y. Galvan went to work at the Company's plant at Corcoran?

A. Yes, I furnished that information.

Q. Do you know whether or not the data contained on this memorandum with regard to Mr. Y. Galvan was compared with the original records based on information you furnished?

A. No, I don't know that. I didn't compare it myself.

Mr. Wingrove: You didn't compare it yourself. I thought [2651] that would be the answer.

Mr. Clark: I suggest that we bring in the original records.

Mr. Mouritsen: I think that would be preferable.

Trial Examiner Lindsay: All right. You may examine him on something else.

Mr. Wingrove: Mr. Examiner, that was the last matter I had to examine him on, the information concerning certain of these men. I can ask him some general questions on the subject.

Trial Examiner Lindsay: If you wish to withhold further questioning until you get that document in here, you may do so.

Mr. Wingrove: I will ask him the questions, all except the dates when they first went to work.

Q. Was Y. Galvan also referred to as Ygnacio Galvan? A. Yes, that is right.

Q. And when he first came to work for the Com-

(Testimony of Gordon L. Hammond.)

pany, the date of which time you do not recall, what type of work was he doing for the Company? What operation was he employed in?

A. He was employed in the mill.

Q. Was A. Galvan employed by the Company—
withdraw the question.

Did Mr. A. Galvan work for the Company prior to November 18th, 1938? [2652]

A. Yes, he did.

Q. Do you recall for approximately how long prior? A. Ten years.

Q. And A. Galvan is one and the same as Andrew Galvan, is he not? A. That is right.

Q. And when he first came to work for the Company, in what operation was he employed?

A. I don't remember just now. I believe, though, in the gins.

Q. Did he do any work at the oil mill before November 18th, 1938? A. He has. [2653]

Q. Did P. Galvan work for the company prior to November 18, 1938? A. Yes.

Q. P. Galvan is one and the same as Peter Galvan, is he not? A. That is right.

Mr. Mouritsen: I object to this manner of testifying by counsel. If the witness knows, there is a proper way to examine him. I have no doubt it is probably the case, but counsel is, in effect, destroying the effectiveness of any evidence that this witness is giving by such a manner of examining.

Trial Examiner Lindsay: Well, there has been

(Testimony of Gordon L. Hammond.)

just too much of leading questions all through this hearing and I have repeatedly called attention to that fact. That isn't even fair to a witness. Let us let the witness testify.

Mr. Wingrove: Very well.

Q. Do you know Mr. P. Galvan's first name?

A. No, I don't other than Peter Galvan. That is all I know.

Q. Now, when he was first employed by the company what operation was he employed in connection with?

A. In the mill operations, I believe.

Q. Was Mr. L. Galvan employed by the company prior to November 18, 1938?

A. Yes. [2654]

Q. Approximately how long prior, if you recall?

A. Oh, some five or six years.

Q. Do you know what the initial "L" stands for?

A. Lawrence, I believe.

Q. What type of operation was he employed in connection with when he first came to work with the company, if you recall?

A. In the mill operation.

Q. Mr. Hammond, I am going back to P. Galvan again for a moment and ask you how long prior to November 18, 1938, was it that Mr. P. Galvan was first employed by the company, to the best of your recollection?

A. Six or seven years.

Q. Was V. C. Galvan employed by the company prior to November 18, 1938?

(Testimony of Gordon L. Hammond.)

A. Yes, he was.

Q. Do you recall approximately for what period of time prior to that day?

A. Some two years.

Q. And when he was first employed or during that two-year interval, can you state what operation he was employed in? A. In the mill.

Q. Was M. Escabedo employed by the company prior to November 18, 1938? A. Yes, he was.

Q. Approximately how long before that date, if you recall? [2655]

A. Three or four years.

Q. And in what type of operation was he employed? A. In the mill.

Q. Will you kindly—I withdraw that question.

Mr. Hammond, we have in evidence as Respondent Boswell's Exhibit 23(c) the social security record of Andrew Clark commencing September 30, 1937. Will you kindly state what operation Mr. Clark was employed in at the time he first went to work—at this particular date of September 30, 1937?

A. He went to work at odd jobs. He went to work as a carpenter.

Q. Did he ever do any work in the gins?

A. Very little.

Q. We have in evidence as Respondent Boswell's Exhibit 23(b) the social security record of H. M. Smith showing that he commenced work September 30, 1937. Will you kindly state the op-

(Testimony of Gordon L. Hammond.)

eration in which he was employed on that date?

Mr. Mouritsen: I object to counsel reading into the record something that is already in the record, due to the fact that it is an exhibit, making the statement, and asking the question.

Is the witness supposed to agree with the statement of counsel or is counsel merely testifying, or what is it? I object to the form.

Trial Examiner Lindsay: Sustained. [2656]

Q. (By Mr. Wingrove) What type of work was Mr. H. M. Smith engaged in at the time he was first employed by the J. G. Boswell Company?

A. He worked at odd jobs, sacking, hauling and planting seed, loading cotton, hauling bales.

Q. Did he perform any work in the gins?

A. I don't believe so.

Q. Was Joe Melton employed by the company prior to November 18, 1938?

A. That date I didn't catch.

(The question referred to was read by the reporter, as set forth above.)

The Witness: Yes, he was.

Q. (By Mr. Wingrove) Approximately how long prior to that date, if you recall?

Mr. Mouritsen: I object to the question on the ground it is ambiguous as to whether it means his initial employment or how long the duration of his employment was.

Trial Examiner Lindsay: Yes. Which is it, Mr. Wingrove?

(Testimony of Gordon L. Hammond.)

Mr. Wingrove: I will reframe the question.

Q. Will you state if you recall approximately how long Mr. Joe Melton worked for the company prior to November 18, 1938?

Mr. Mouritsen: I object on the ground it is the same question. It doesn't give us an opportunity to determine [2657] whether he is referring to the initial employment or the duration of the employment that Mr. Melton had with the company.

Mr. Wingrove: How long is duration?

Trial Examiner Lindsay: Off the record a moment.

(Here followed discussion off the record.)

Trial Examiner Lindsay: He may answer.

Do you know what question he gave you now?

The Witness: I don't know if I understand it.

Trial Examiner Lindsay: Read the question.

(The question referred to was read by the reporter, as set forth above.)

Trial Examiner Lindsay: Do you know what the question means?

The Witness: I believe so.

Trial Examiner Lindsay: You may answer.

The Witness: 35 or 40 days.

Q. (By Mr. Wingrove) And what type of work was he employed at, if you know?

A. Operating a cotton drier.

Mr. Clark: May we have that answer, please?

Trial Examiner Lindsay: Yes. Read the answer.

(The answer referred to was read by the reporter, as set forth above.)

(Testimony of Gordon L. Hammond.)

Trial Examiner Lindsay: Keep your voice up. [2658]

Q. (By Mr. Wingrove) Was Fred Matthews employed by the company prior to November 18, 1938?

A. Yes, he was.

Q. Do you recall approximately when it was that he was first employed?

A. Some time in May 1938.

Q. And what type of work was he placed at when he was first employed?

A. Cleaning up around the plant.

Q. Did he do any work in connection with the mill?

A. He has, yes.

Q. Did Lee Chestnut ever at any time work for you at the J. G. Boswell Company plant?

A. No, he did not.

Q. Did Al Chestnut at any time work for you at the J. G. Boswell Company Corcoran plant?

A. No.

Q. Did Walden Bunker ever work for you at the J. G. Boswell Company's Corcoran plant?

Mr. Mouritsen: Now, may I have the question clarified as to what counsel means by "working for you"? Is that personally or work in the plant, or what?

Trial Examiner Lindsay: Do you refer to the company?

Mr. Wingrove: Yes, working under Mr. Gordon Hammond's supervision at the plant at Corcoran. [2659]

(Testimony of Gordon L. Hammond.)

Mr. Mouritsen: All right.

Trial Examiner Lindsay: All right.

The Witness: No, he did not work in the plant.

Q. (By Mr. Wingrove) Do you know where he did work, if at all? A. Well——

Mr. Mouritsen (Interrupting): That is objected to as immaterial, then.

Mr. Wingrove: Well, he didn't work at the plant, but I have a right to establish where he did work.

Trial Examiner Lindsay: Well, if you frame your question properly.

Q. (By Mr. Wingrove) Do you know if Mr. Walden Bunker did work for the J. G. Boswell Company at any time?

A. Why, he is a cowboy. He works for a Mr. W. W. Boswell; and if I understand it, it would be for the company also.

Mr. Mouritsen: May I have that answer read?

(The answer referred to was read by the reporter, as set forth above.)

Q. (By Mr. Wingrove) I believe you testified, did you not, that he never worked at the Corcoran plant that you have charge of?

Mr. Mouritsen: Objected to as already asked and answered.

Trial Examiner Lindsay: Oh, it has been answered, but let him answer it again. [2660]

Did you answer that again?

The Witness: He did not.

Q. (By Mr. Wingrove) Did Leland Douglas

(Testimony of Gordon L. Hammond.)

Caffell—did he ever work under your supervision at the Corcoran plant of the J. G. Boswell Company at any time?

A. No, he did not.

Q. Do you know as to where he was employed by the J. G. Boswell Company, if at all?

A. He is a cowboy. I don't know just where he worked.

Q. Subsequent to November 18, 1938, was Mr. H. A. Champane employed by you at the Corcoran plant?

A. Since November 18th?

Q. Yes? A. Yes.

Q. Do you recall approximately when he was employed?

A. About March 11th or 12th, 1939.

Q. And in connection with what operation was he employed? A. He is a welder.

Q. And where did he work?

A. In the welding shop, blacksmith shop.

Q. And how long did he work?

Mr. Mouritsen: This is all in Board's Exhibit 3.

Mr. Clark: The fact that he is a welder isn't.

Trial Examiner Lindsay: He has it in the record.

Q. (By Mr. Wingrove) Well, he is still employed there, Mr. [2661] Hammond?

A. He is there today, yes. There have been times he has been off.

Q. Did Charles A. Crye ever work under your supervision at the Corcoran plant?

(Testimony of Gordon L. Hammond.)

A. No, he did not.

Q. Do you know where he did work if he did work for the company or any of its affiliates?

A. Oh, I don't know where he worked. He worked for the Malga Company, that is, a ditch, in the Chamberlain ranch.

Q. Will you kindly tell us where the Chamberlain ranch is, if you know?

A. To the north of Corcoran, west and south of Guernsey.

Q. And do you have anything to do with the Chamberlain ranch? A. No.

Trial Examiner Lindsay: Does the Boswell Company own that ranch?

The Witness: I believe so. I am not sure. I would say so.

Q. (By Mr. Wingrove) Was John Watson ever employed under your supervision at the Corcoran plant of the company?

A. No, he was not.

Q. Do you know as to whether or not he ever did any outside work or worked any place for the company or any of its affiliates? [2662]

A. He worked at the same place.

Q. What do you mean by the same place?

A. Where Crye works.

Q. And that is the Chamberlain ranch?

A. Yes.

Mr. Mouritsen: May we have that part of the question of counsel cleared up as to what is meant by the company or any of its affiliates? [2663]

(Testimony of Gordon L. Hammond.)

Trial Examiner Lindsay: Yes. There is one of your questions that isn't right, there.

Will you read back the question about any of the affiliates?

(The question referred to was read by the reporter, as set forth above.)

Trial Examiner Lindsay: What do you mean by that?

Mr. Wingrove: I mean any of its outside operations in which he might be engaged directly or indirectly.

Trial Examiner Lindsay: Do you understand the question?

The Witness: I believe so.

Trial Examiner Lindsay: Now, the last question.

(The record referred to was read by the reporter, as set forth above.)

Q. (By Mr. Wingrove) Well, did Mr. Crye, to your knowledge, ever work at the Boswell Company's plant in Corcoran?

A. No, he did not.

Q. Did Mr. Watson to your knowledge ever work with the Boswell Company plant at Corcoran?

A. No.

Mr. Wingrove: You may examine.

Trial Examiner Lindsay: I think we will have a five minute recess.

(At this point a short recess was taken, after which proceedings were resumed, as follows.) [2664]

(Testimony of Gordon L. Hammond.)

Trial Examiner Lindsay: Hearing called to order.

Mr. Wingrove: Mr. Examiner, may I ask the witness two or three more questions?

Trial Examiner Lindsay: Yes.

Q. (By Mr. Wingrove) Mr. Hammond, do you know whether or not Mr. Harry Rickman was employed at the J. G. Boswell Company plant at Corcoran subsequent to November 18th, 1938?

A. No, he wasn't.

Q. Do you know where he was employed, if he was employed by the Company in connection with the operations?

A. November——

Q. (Interrupting): I say, do you know where Mr. Rickman was employed, if in fact he was employed by the Company in connection with any of its operations?

A. He drives a bulldozer at District 749 on the levee since about March 11th or 12th, 1939.

Q. That is some outside work for the Company, is it?

A. The Company pays his payroll.

Q. Well, will you kindly state where this District 749 is located?

A. It is out on the lake, under water at the present time.

Q. That is the only place that Mr. Rickman has worked, so far as you know; is that correct?

A. Yes, that is right.

Q. Can you state approximately how long prior

(Testimony of Gordon L. Hammond.)

to November [2665] 18th, 1938, Y. Galvan worked for the Company at the Corcoran plant?

A. Ten or eleven years.

Q. I believe you have testified that Mr. Champane was employed as a welder in the shop sometime in March, 1939.

Will you kindly state as to whether or not any of the men named in the amended complaint on file in this present proceeding are qualified to perform the same type of work which is being performed by Mr. Champane?

Mr. Mouritsen: I object to that on the ground it is incompetent, irrelevant and immaterial, compound and complex; calls for a conclusion of the witness, indefinite and vague.

Trial Examiner Lindsay: Well, if he knows he may answer.

The Witness: I know that they are not; they can't do welding.

Q. (By Mr. Wingrove) Is welding a specialized type of work, Mr. Hammond?

Mr. Mouritsen: Objected to as calling for a conclusion of the witness.

Mr. Wingrove: I just asked him if he knew.

Trial Examiner Lindsay: Well, if he knows whether it is or not, he may.

Do you know?

The Witness: Well, I would say it is. I am not a welder myself. [2666]

Mr. Mouritsen: What is that?

(Testimony of Gordon L. Hammond.)

The Witness: I would say it is. I can't do welding myself.

Mr. Winslow: You may examine.

Cross Examination

Q. (By Mr. Mouritsen) Mr. Hammond, you have lived in Corcoran something over 14 years, is that correct?

A. That is correct.

Q. During that period, you have been one of the leading men of the community, is that correct?

A. I don't know as—you may say so. I have lived here.

Q. I will ask you if your work at the plant, or your supervision of the work at the plant brings you into the machine shop at the plant on numerous occasions?

A. It does.

Q. And I will ask you if there isn't located in the machine shop at the plant a board upon which are posted first aid bulletins and other memoranda of the Company?

A. First aid only, I believe. I have never seen any other papers on the board other than clippings from newspapers which some of the employees have put up just for jokes on each other.

Q. Well, on occasion, haven't required announcements of the Social Security Board been placed on this board in the machine shop?

A. No, they have not. [2667]

Q. How large is that board, Mr. Hammond?

A. It is about three by four feet.

(Testimony of Gordon L. Hammond.)

Q. And, as I understand it, there are two big double doors on the side of the machine shop facing the office building, isn't that correct?

A. No, one only.

Q. Only one big double door?

A. Just one door. It isn't a double door.

Q. A sliding door?

A. That is right.

Q. And approximately ten or twelve feet long, isn't it? A. Yes, it is.

Q. And isn't this board upon which the notices you mentioned are posted, almost directly in front of that door?

A. No, it isn't quite.

Q. Perhaps two or three feet one way or the other?

A. Could be two or three or four feet to one side.

Q. But haven't you noticed that, as you walk through the door, that board upon which these notices you have mentioned are posted is almost the first thing that strikes your eye?

Mr. Clark: Objected to as calling for the conclusion of this witness as to what any other person would observe. This is obviously intended as impeachment of Mr. Louis Robinson, who said he has never noticed such a bulletin board in the machine shop. [2668]

Trial Examiner Lindsay: Just a minute. The question is very proper. It is a question which was

(Testimony of Gordon L. Hammond.)

directed directly to this man and no other witness or no other person, as I recall the question.

Will you read the question?

(The record referred to was read by the reporter, as set forth above.)

Trial Examiner Lindsay: He may answer that question.

The Witness: Well, it is in plain view of the door. I don't know if it would be the first thing you would notice in entering.

Q. (By Mr. Mouritsen) And isn't that bulletin board—strike that.

Isn't that board upon which these notices are posted immediately next to the door through which the employees go for supplies?

A. No. It is quite a ways from the door. It is near a window, though.

Q. And what, if any, function does that window fulfill with respect to the employees obtaining supplies?

A. There are supplies issued through that window.

Q. And is that the window through which the supply or stock man passes out supplies to the employees?

Mr. Clark: I object to that on the ground that it is indefinite; employees engaged in what, Mr. Examiner? Employees [2669] in the machine shop or somewhere else?

Trial Examiner Lindsay: Yes.

(Testimony of Gordon L. Hammond.)

Q. (By Mr. Mouritsen) To any employees—I will qualify the question to this extent—to any employees who make requests for supplies?

Do you understand that now?

A. I don't know.

Q. It is rather jumbled. I will re-frame it.

Isn't that the window through which supplies are passed to any employee who requests them from the stock clerk?

A. Yes, that is the window.

Q. Now, Mr. Hammond, how long has that board been in that position in the machine shop?

A. For some two years, I would say.

Q. And during that period—it has remained there continuously for the last two years? It has not been taken down, is that correct?

A. No, it hasn't been taken down.

Q. Now, Mr. Hammond, I believe you testified that you weren't present at the plant on November 18th, 1938, between the time of 8:30 in the morning and 7:00 o'clock at night.

Is that correct?

A. That is correct.

Q. And where were you during that time, that is, between 8:30 in the morning and 7:00 o'clock in the evening? [2670]

A. I went to Los Angeles.

Q. And did you have lunch or dinner in Los Angeles? A. San Fernando.

Mr. Clark: May I ask that the answer go out so

(Testimony of Gordon L. Hammond.)

that I can interpose an objection? The question was did you have lunch or dinner at a certain place, and I think he said yes, at San Fernando. I don't know which it is. It calls for two different answers.

Mr. Mouritsen: I will clear it up.

Q. Did you have lunch in San Fernando on that occasion? A. I did.

Q. And did you have dinner at any place on that occasion? A. At home. [2671]

Q. Now, who—strike that.

And after—did you have lunch before or after you proceeded to Los Angeles?

A. I had lunch in San Fernando—going to Los Angeles.

Q. And then you proceeded on to Los Angeles, is that correct? A. Yes.

Q. And where did you go in Los Angeles?

A. I was on 41st Street.

Q. Do you recall the address on 41st?

A. No, I don't. I could get it.

Q. Do you know about how far west did you proceed in Los Angeles?

A. That—right off of Washington Boulevard as well as I remember and a block next to Washington Boulevard.

Q. Do you recall any of the streets that run approximately north and south near Washington Boulevard?

A. Well, I am not familiar with the streets. I

(Testimony of Gordon L. Hammond.)

don't know if 41st Street runs north and south or east and west.

Q. If I tell you that 41st Street runs approximately east and west, could you tell any—could you give us the names of any of the intersecting streets near this place that you went on 41st Street?

A. No, I can't do that.

Q. Was it near Western? [2672]

A. No, I couldn't tell. I am not familiar with Los Angeles.

Q. Well, when you drove into Los Angeles did you continue along the highway—strike that.

Did you proceed to Los Angeles along Highway 99?

A. I did, and just before I crossed the railroad in Burbank I took a right-hand road there and went back into Broadway and just after we went through three tunnels. I don't know the names of the streets.

Q. And after you went through the three tunnels did you come out near the city and county buildings in Los Angeles? A. Yes.

Q. And then did you proceed west at that time?

A. I think on Main Street. I am not sure.

Q. You went down along Main Street in a southerly direction, is that correct, past the city and county buildings? A. That is right.

Q. And do you recall the street on which you turned off, if you did turn off, or did you proceed along Main Street to 41st Street?

(Testimony of Gordon L. Hammond.)

A. I went straight on Main Street, two or three intersections, and I don't know what streets they are, onto Main Street and right on out to 41st Street.

Q. The traffic is pretty bad and pretty thick along Main Street, isn't it? [2673]

A. There is quite a bit of traffic.

Q. And you proceeded slowly, I suppose——

A. (Interrupting) Rather slow, followed the traffic all of the way.

Q. And you don't recall turning—strike that.

I believe you did say that you did leave Main Street before you got to 41st Street, is that correct?

A. Yes, I did.

Q. Now, did you leave Main Street on Washington Boulevard, turn either east or west on Washington Boulevard?

A. I got to 41st Street and turned to the right and where the party was going—lived in the block near the street, the main street we were on, in the block near the street.

Q. And do you recall the main street that you were on?

A. I call it Washington Boulevard; so far as I remember that was what it was.

Q. How long did you proceed along Washington Boulevard before you turned off on to 41st Street?

A. Well, 41st Street crosses the boulevard I was on.

Q. Well, when you left Main Street did you turn to the right or to the left?

(Testimony of Gordon L. Hammond.)

A. Well, if it was—it was a little bit to the left as I remember. It is there where there are some intersections. I am not familiar with the directions but if it is either way it is to the left, very little, though. [2674]

Q. And did you cross some railroad tracks after you proceeded along this street on which you turned when you turned from Main Street?

A. Well, I crossed some railroad tracks. I don't know if it was a street car or railroad track or what. I crossed some tracks. [2675]

Q. Weren't there three or four railroad tracks, or did you cross those?

A. I can't tell that. It could have been, easy enough. I didn't notice them.

Q. Now, what did you do after you reached this address someplace on 41st Street to which you were—for which you were heading?

A. We left our party there and turned right around and came back.

Q. And will you, during the next time that we have an adjournment, obtain that address on 41st Street for us?

A. I will. I think my wife has that.

Q. Now, was this address on 41st Street the home of any relative of yours?

A. No, not a relative.

Q. Well, or of your wife's?

A. I don't think so. I couldn't say for sure.

Q. What was the name of the people who were staying at this place on 41st Street?

(Testimony of Gordon L. Hammond.)

A. The party we took there was named Benson, Venus Benson, from the State of Illinois.

Q. And do you know the name of the people who were at this address on 41st Street? Was their name Benson also?

A. No, I don't know the name of the parties there. I may be able to get that for you. [2676]

Q. And who accompanied you on that trip?

A. My mother, my sister and my wife, and two little children.

Q. Now, could we have your wife's name, please?

A. Ellen.

Q. And your sister?

A. Grover, Emily Grover.

Q. And your mother's name, please?

A. Jodie Hammond.

Q. Could you spell that, please?

A. J-o-d-i-e. That is the way I spell it. It may not be proper.

Q. And the children's names?

A. Irma Lee Hammond; Arvella Hammond.

Q. Is that A-r-v-e-l-l-a? A. Yes.

Q. Now, was—did Venus Benson accompany you? A. Yes.

Mr. Clark: What is that first name, please, Mr. Examiner?

Trial Examiner Lindsay: The witness knows.

The Witness: Venus; V-e-n-u-s.

Q. (By Mr. Mouritsen) So that in the car at that time, there was Venus Benson, Ellen Ham-

(Testimony of Gordon L. Hammond.)

mond, Emily Grover, Jodie Hammond, Irma Lee Hammond, and Arvella Hammond, and yourself; is that correct? A. Going down, yes. [2677]

Q. In whose car did you make the trip?

A. In my own.

Q. And what kind of a car is that?

A. It is a Buick.

Q. What year? A. '37.

Q. I believe you said you stopped for lunch in San Fernando, is that correct?

A. That is true.

Q. Did you do anything else while you were in San Fernando other than stop for lunch?

A. That is all.

Q. And did you make any other stops other than at San Fernando?

A. No, except traffic stops; maybe to get some gas. I believe I did stop one time for gas.

Q. And how did you drive on that occasion? Did you exceed the speed limit on any occasion?

Mr. Clark: I object to that on the ground it is incompetent, irrelevant and immaterial, Mr. Examiner. Mr. Hammond isn't on trial for speeding or anything else.

Mr. Mouritsen: I will let him claim his immunity.

Mr. Clark: We will claim that if it has to be answered. May I have a ruling?

Trial Examiner Lindsay: He may tell how he drove.

(Testimony of Gordon L. Hammond.)

Mr. Clark: The question was did he exceed the speed limit. [2678]

I object to that on the ground it is incompetent, irrelevant and immaterial.

Trial Examiner Lindsay: I said he may tell how he drove.

Mr. Clark: Counsel calls my attention to the fact there isn't a speed limit in this State, anyway. It is a question of reckless driving or not.

Q. (By Mr. Mouritsen) I will ask you, Mr. Hammond, whether on the State Highway to Los Angeles on that occasion you exceeded 40 miles per hour?

A. I may have at times. I don't know.

Mr. Clark: I object to that.

Trial Examiner Lindsay: He may answer.

Mr. Clark: All right.

Q. (By Mr. Mouritsen) In view of the fact that you had six or seven persons in the car, you drove rather slowly on that occasion, isn't that correct?

A. Not necessarily; ordinarily driving continuously. I wouldn't make any stops except when we would eat lunch that would hold us up any at all. [2679]

Q. And at what average rate of speed would you estimate that you proceeded on that occasion?

A. I couldn't average that. I would say 40 or 45 miles, but I never paid any attention to that.

Q. Well, I will ask you what was your average

(Testimony of Gordon L. Hammond.)

rate of speed if you can give it to us regarding when you proceeded along the open highways.

A. Well, I would say 45 miles.

Q. And, of course, you had to slow up for the various towns that you had to go through, isn't that correct? A. That is correct.

Q. And that would be the towns on Highway 99 between here and Los Angeles, isn't that correct.

A. Yes.

Q. Now, I believe you stated that you returned about 7:00 o'clock in the evening, is that correct?

A. That is correct.

Q. And after you reached the plant at or about that time I believe you stated that you made out some time cards, is that correct? A. I did.

Q. Approximately how many time cards did you make out at that time? A. Well, 75 to 90.

Q. And what—in making out the time cards, what work [2680] does that involve on your part, Mr. Hammond?

A. That takes in all of the employees except what worked in the machine shop and the blacksmith shop that day.

Q. No. What I am trying to find out is what do you do—what do you have to check or what do you have to do in order to make out the time cards?

A. Well, some of them make a card of their own and drop them in a box, the type of work they did that day; and some don't make any. And I take that and put it on to my weekly time card like those we had here yesterday.

(Testimony of Gordon L. Hammond.)

Q. I will show you Respondent Boswell's 9-A and ask you where you obtained the information regarding the number of hours that a man works in order that you can put it on a card similar to Respondent Boswell's 9-A?

A. Well, some of them make a daily card. I take from that. Some don't make any. Where they don't make any and work, I know where they were, what they were doing, like the mill operation, anyone that is working in the mill during the day or during the night—some of those don't make a card, and operate 12 hours a day or 12 hours at night. That is where I get the time from.

Q. Well, I believe you stated that some men make out cards themselves; is that correct?

A. Yes.

Q. Some do not make out any card at all? [2681]

A. That is right.

Q. Now, as I understand your testimony with reference to Respondent Boswell's 9(a) for Mr. L. E. Ely, you stated that this entire card was made out in your handwriting, isn't that correct?

A. This card is.

Q. Now, I will ask you if prior to the time you made out this card, Mr. Ely had made out a card from which you took this information that is contained in Respondent Boswell's 9(a)?

A. I don't know that particular day if he did or not. I—he made out cards some days, and some I don't think he did.

(Testimony of Gordon L. Hammond.)

Q. Well, let me ask you this: Are there any particular types of employees or classifications who do not make out time cards at all?

Mr. Clark: Objected to on the ground it has already been asked and answered. He has fully explained that, Mr. Examiner.

Trial Examiner Lindsay: He may answer that.

The Witness: Some of the employees that are working in the mill, they work 12 hours a day each shift, each 12 hours, and the same applies to the gin. The operation runs continuously, but where it is a part day's and off some days, then they make a card.

Q. Now, on November 18th, 1938, when you made out the time cards, was it necessary for you to check with someone as to the length of time that the mill had run, or that the gins had [2682] run, or something, in order to make out the time card?

A. No, not necessarily.

Q. Well, on November 18th, 1938, after you returned from Los Angeles, will you tell us just what physical work or what actions you performed when you did what you have described as making out the time cards?

A. I went and picked up the cards that had been made out.

Q. Then what did you do?

A. I took them to my office and put the time on those cards.

Q. And on that occasion, do you recall whether

(Testimony of Gordon L. Hammond.)

or not there were some men who worked who didn't have any time cards from which you took information which you later put on a card similar to Respondent Boswell's 9-A?

A. Yes, there were some.

Q. Now, how did you check on the number of hours that they had worked and the type of work that they did on that day for the purpose of making out a record similar to Respondent Boswell's 9-A?

A. I gave them the time that the gin operated during that day.

Q. Well, did you check with somebody to find out how long the gin had operated on that day, before you made out a card similar to Respondent Boswell's 9-A?

A. I don't believe I did.

Q. Well, how did you ascertain how long the gins had run on [2683] that particular day?

A. I gave them the time from 6:00 o'clock until 3:00, part of them, and from 10:00 to 6:00. Those fellows that had left, I gave them a full day, ten hours, I believe.

Q. Now, was the first thing that you did after you preceeded—or returned to the plant at 7:00 o'clock on November 18th, 1938—was the first thing you did, to make out the time cards?

A. Yes, I think—I went to make them out. I didn't get through. I had to do something else.

Q. You had to do something else? You didn't get through?

A. There was some cotton there. I weighed it

(Testimony of Gordon L. Hammond.)

and got it in the yard, and went back and finished.

Q. Before you made out the time cards, did you talk to anyone at the plant?

A. Before I finished, I did.

Q. Was that when you weighed out the cotton?

A. Yes.

Trial Examiner Lindsay: I think that we will stop here.

We will adjourn until 11:00 o'clock tomorrow morning.

(Whereupon, at 11:45 o'clock, A. M., June 14, 1939, the hearing was adjourned to 11:00 o'clock A. M., Thursday, June 15, 1939.) [2684]

American Legion Hall
Corcoran, California
Thursday, June 15, 1939.
11:00 o'clock A. M. [2685]

PROCEEDINGS

Trial Examiner Lindsay: Hearing called to order.

Mr. Clark: The Respondents are ready.

Mr. Mouritsen: Ready for the Board, Mr. Examiner.

Trial Examiner Lindsay: You may proceed.

Mr. Mouritsen: Before we recall the witness, Mr. Examiner, I would like to call attention to a couple of errors in the transcript.

On page 2623, at line 24, the answer to the question was: "I don't remember of any, not at the time he has set anyway, because he wasn't there at that time."

Mr. Clark: That is just what we are reading here. What do you think it is?

Mr. Mouritsen: My notes indicate very definitely that he said "I don't remember of any, not at the time he has set anyway, because I wasn't there at that time."

Mr. Clark: That is the way I remember it.

What is your recollection on it, Mr. Wingrove?

Mr. Wingrove: My recollection is that it was the way it is now.

Mr. Mouritsen: I requested, in view of the fact I noted very definitely in my notes that it was "I", I requested the reporter to check back on it through his notes.

Mr. Clark: Perhaps we can get together on it in just a minute. [2687]

Trial Examiner Lindsay: I seem to have "him."

Mr. Clark: Oh, you do?

Mr. Mouritsen: I asked the reporter to check it back, and Mr. Weigel informs me his notes say "I", and I have a very definite note on it. I requested the reporter to re-read the statement at the time because I thought he said "I." I wanted to be sure about it.

Mr. Clark: Mr. Lindsay's notes say "he" or "him;" Winslow's recollection is that it was "he"

or "him," and my recollection is that it was "I," so I don't know.

Trial Examiner Lindsay: The witness is going to be back on the witness stand?

Mr. Clark: Yes. I suggest we leave the record as it is. The question can be asked him on cross examination.

Trial Examiner Lindsay: I don't want to change it unless I am sure. That is a difficult thing with a witness who doesn't talk loud enough so we can fully understand. It is hard on the reporters and it isn't any wonder that the reporters have a little trouble.

However, these mistakes, I want it noted, are not mistakes of taking the testimony. It is just transcribing it from the dictaphones where those mistakes are made, taking it off the dictaphone. Sometimes words that are similar to each other sound alike, and therefore the operators in taking it off the dictaphone often make mistakes in transcribing them. [2688]

Mr. Clark: I think Mr. Wingrove has some corrections.

Trial Examiner Lindsay: Off the record.

(Discussion outside the record.)

Trial Examiner Lindsay: You have some corrections, Mr. Wingrove?

Mr. Mouritsen: I have one other.

Trial Examiner Lindsay: All right.

Mr. Mouritsen: On page 2661, line 16, the an-

swer as it appears in the record is "About March 11th or 12th, 1938."

I think that should be March 11th or 12th, 1939.

Trial Examiner Lindsay: Read the preceding question. I think I recall that definitely.

Mr. Mouritsen: This is with reference to Mr. Champagne's employment at the Corcoran plant, and I am satisfied that Board's 3 shows that it should be 1939.

Mr. Clark: How about that, Mr. Wingrove?

Mr. Wingrove: I believe that is correct.

Trial Examiner Lindsay: Yes, I am sure that is correct.

Mr. Wingrove: The testimony shows March, 1939.

Mr. Mouritsen: Will it be stipulated, then, that the answer may read "About March 11th or 12th, 1939?"

Mr. Clark: So stipulated.

Mr. Mouritsen: Those are the only corrections I have. [2689]

Mr. Wingrove: I have noted two or three points which I think should be corrected, Mr. Examiner.

The first is on page 2625, line 3, the question put by me to the witness:

"Q. Either at the time or any other time?"

That question referred to a particular conversation on a particular date and I am confident the word "the" should be "that," so it should read "Either at that time or any other time?"

Trial Examiner Lindsay: I think that is correct.

Do you agree on that, Mr. Mouritsen?

Mr. Mouritsen: Yes.

Mr. Wingrove: The next notation I have is on page 2626, line 6. I will read the answer commencing with line 5:

“A. Well, he was at work during the 2nd through the 17th of May, and I talked to him four times in the morning.”

I am confident that the witness didn't testify that he talked to him four times in the morning. I think he said more times than once, instead of four times in the morning. That is Mr. Painter's recollection also.

Mr. Painter: That referred to a conversation with Mr. Gilmore.

Trial Examiner Lindsay: Yes.

Well, I seem to have it two different ways. My recollection of that is that you are right, Mr. Wingrove, that he said he talked more than once.

Do you have any recollection of that, Mr. Mouritsen? [2690]

Mr. Mouritsen: Well, from the—my recollection is that he said three or four times. In other words, in the context of the following question it would indicate that he said on a number of occasions he had talked with him, because counsel attempts to fix the dates of any of them.

Mr. Painter: He undoubtedly talked with him.

Trial Examiner Lindsay: Here is the way I have it: I have the word “about” in *their* and I

also have that he talked more than once and following that is a dash, "about four times."

Now, whether that is correct or not—my recollection is that is about the way he testified, but he is going to be on the witness stand and let us not do any guessing about it.

Mr. Wingrove: The next notation I have is on page 2627, line 3. It appears that I have three or four different names, because I have been named there as "Winslow" and I would like to have that corrected.

Trial Examiner Lindsay: Yes, that may be corrected.

Any other corrections?

Mr. Wingrove: Yes.

On page 2633, line 7. I will go back to line 5 and read the question which was put by me.

"Q. And on November 17, 1938, I believe the stipulation shows and you testified that practically all of the planting seed that was being laid aside for the 1939 season had been [2691] stacked and hauled, except there were a few sacks in the yard which hadn't been hauled. Is that correct?"

Now, the word "stacked" should be "sacked."

Trial Examiner Lindsay: That is right.

Mr. Mouritsen: So stipulated.

Mr. Wingrove: On page 2655, line 13:

"Q. Was B. C. Galvan"—I believe that is the improper initials. It should be "V. C.," V as in very.

Trial Examiner Lindsay: If that is his initial.

Mr. Wingrove: I have "V. C." in my notes, and I think it was perhaps the phonetic connection between "V" and "B."

Trial Examiner Lindsay: Are there two? Is there one by the name of V. C. and one by the initial of B. C.?

Mr. Wingrove: There are not. And in examining the witness in regard to these men I was using the names as they appeared by Mr. Mouritsen's previous reading of certain names from the Social Security Record, Board's Exhibit 3, and I just wanted to get the initials to correspond with the initials Mr. Mouritsen had read into the record.

Trial Examiner Lindsay: Yes. "V. C." is what I have. Is that agreeable?

Mr. Mouritsen: Yes.

Mr. Wingrove: I also desire to call attention to the fact—I don't have the page number of it—but in the spelling of the name of Mr. Champagne, originally that was spelled into the record by Mr. Mouritsen; I believe it was [2692] C-h-a-m-p-a-n-e, and when that name was written up in yesterday's testimony, it was spelled, I believe, C-h-a-m-p-a-i-g-n-e, and I would like the record to show that despite the dissimilarity of spelling that it was one and the same person that was intended.

Mr. Mouritsen: That is on page 2661, line 10. That is agreeable.

Mr. Wingrove: Those are all of the notations for corrections that I have, Mr. Examiner.

Trial Examiner Lindsay: Do you have any more?

Mr. Mouritsen: No.

Mr. Hammond.

Trial Examiner Lindsay: Mr. Hammond.

[2693]

GORDON L. HAMMOND

the witness on the stand at the time of adjournment, resumed the stand and was further examined and testified as follows:

Cross Examination

(Continued)

Q. (By Mr. Mouritsen): When you were last seen on the stand, Mr. Hammond, I believe you were testifying regarding certain work that you did at the plant after you returned to the plant on November 18th, 1938.

Do you have that time in mind?

A. Yes, I believe so.

Q. I believe you testified yesterday that you—the first thing you did when you returned to the plant was to make out the time cards; is that correct?

A. I began to.

Q. And that, I believe you testified, you made out between 75 and 80 time cards, is that correct?

Mr. Clark: No, that is not the testimony. I will object to it on the ground it mis-states the record. The witness said he was working at them, and there were 75 or 80 time cards, but before he finished,

(Testimony of Gordon L. Hammond.)

he was called out to load some cotton, or something of that kind.

Q. (By Mr. Mouritsen): Do you accept Mr. Clark's testimony as your own, Mr. Hammond?

A. Yes.

Q. Now, approximately how many time cards had you made out [2694] before you went out to weigh some cotton?

A. Oh, I have no way of knowing or remembering just how many there was.

Q. Do you have any recollection of the approximate number?

A. Oh, I would say less than half.

Q. And before you went out to weigh out the cotton, did you have any conversation with anyone in the office?

A. Yes, I did.

Q. With whom did you have any conversations?

A. E. M. Roberson and Rube Lloyd.

Q. And did you have a conversation with them both at the same time? Were they both present?

A. Yes, they were.

Q. And was anyone else present?

A. I don't remember that there was at that time. I don't believe there were just at that time.

Q. Now, will you tell us what Mr. E. M. Roberson or Rube Lloyd said, and what you said at that time?

Mr. Clark: Objected to upon the ground it is hearsay, and incompetent, irrelevant and immaterial as to the Respondents Associated Farmers of

(Testimony of Gordon L. Hammond.)

Kings County and the Corcoran Telephone Exchange.

I will ask that that objection be deemed to run to this entire line of testimony.

Mr. Mouritsen: So stipulated. [2695]

Trial Examiner Lindsay: Yes. He may answer.

The Witness: Why, as well as I remember, I asked them what the crowd was doing there. There was quite a few there in the front office.

Q. (By Mr. Mouritsen): You asked them—may I have that read? I didn't get all of it.

(The record referred to was read by the reporter, as set forth above.)

Q. (By Mr. Mouritsen): Now, will you continue as to what was said further at that time?

A. They told me they had had some trouble.

Q. Can we have which one, if possible, who told you or made the statement?

A. I think Yankee Roberson, E. M. Roberson was talking then at that time; both of them were talking, though, during the conversation; that there had been some difficulty among the employees that day out in the yard. They were telling me about it.

Q. Now, what did they say to you? I would just like to have it in substance. I don't want the exact words. I would just like to have, as nearly as you can recall, what they said.

A. They said that they had come there that evening for the purpose of letting the company

(Testimony of Gordon L. Hammond.)

know they were satisfied with their work and the way it was being managed and the conditions in every way. [2696]

Q. What did they say, though, about the difficulty in the morning? Did they describe to you what had taken place?

A. Yes, they told me.

Q. Will you give us what they said to you as nearly as possible, respecting the difficulty that had taken place in the morning?

A. Well, they said there seemed to be some misunderstanding among the employees that morning; that they closed down the machinery about 10:00 o'clock or just after 10:00 and all got together and were discussing some matters that they had—some of them didn't understand—and during that discussion, some one in the crowd said, "Let us throw them out," and from that they did, I think, take ahold of Mr. Spear and take him over to the office, something to that effect.

Q. Did they tell you what the misunderstanding was?

A. No, they didn't.

Q. Did you know what it was?

A. No.

Q. Did you ask them to clear that up or tell you what misunderstanding it was?

A. Well, I did talk to them, talked to them later.

Q. But you didn't at that time ask them to tell you what the misunderstanding was all about?

A. That is about the conversation at that time.

(Testimony of Gordon L. Hammond.)

Q. You didn't ask them to explain what the misunderstanding [2697] was?

A. Well, I don't remember if they told me any further than that or not that evening.

Q. You don't recall asking them to tell you what the misunderstanding was that had occurred?

A. Well, I don't believe I do right now.

Q. Now, did they say anything further at that time respecting—strike that.

Did they tell you at that time who else, if any-one, had left the plant on that day?

A. Yes, they did.

Q. Do you recall whom they said to you had left the plant that day?

A. Well, I don't know if they told me all that evening or not. The next morning they did name some others. They told me that Mr. Spear—

Mr. Clark (Interrupting): Just one moment, Mr. Examiner. Let us keep these conversations separate, if we can. Let us have everything that Mr. Hammond remembers on the first one.

Trial Examiner Lindsay: That is what he is asking him for.

Mr. Mouritsen: That is what I am trying to get at, Mr. Clark.

Q. In other words, do you or do you not recall the names of any other men they named to you at that time as being men [2698] who had left the plant that morning?

Mr. Clark: I object to that upon the ground

(Testimony of Gordon L. Hammond.)

it is assuming something not in evidence, and misstates the witness's testimony. The only name that has been mentioned is that of Mr. Spear being taken over to the office.

Trial Examiner Lindsay: He is just asking him for further names, if he remembers.

Mr. Clark: And he adds to that "who were thrown off"—"who left the property."

Trial Examiner Lindsay: Let us not argue.

Mr. Mouritsen: I ask that counsel be requested to watch the questions more closely.

Mr. Clark: Let us have it read back.

Trial Examiner Lindsay: Just a minute. I don't want any more of that.

Now, read the question back.

(The record referred to was read by the reporter, as set forth above.)

Mr. Clark: I object to that upon the ground it is a mis-statement of this witness's testimony.

Trial Examiner Lindsay: Why, Mr. Clark—he may answer the question. Proceed.

The Witness: Why, I believe he told me some others that left during that time.

Q. (By Mr. Mouritsen): Do you recall at this time any of the [2699] names of the men that they gave you at that time? A. Yes, I can.

Q. Will you please state them?

A. Mr. Martin, Mr. Farr, Mr. Wingo, Mr. Andrade and Mr. Briley. I believe that is all.

(Testimony of Gordon L. Hammond.)

Q. Now, what did they tell you regarding Mr. Spear at that time?

A. They told me they went to the office and was there for a little while, and Mr. Robinson came out and told them to go back to work.

Q. Well, what did they say respecting Mr. Spear's being taken to the office?

A. I believe they told me two fellows taken ahold of each arm, and maybe one pushed him from the back.

Q. Did you ask them the names of those men who had taken him by the arms, and had pushed him from the back?

A. I don't remember if I did that evening or not.

Q. Now, do you recall anything further that they either said to you, or that you said to them at that time?

A. Yes. They said they went back to work and went over to work—they didn't go back to work—and they were there for a little while and then they left, went home.

Q. Well, now, who went back to work and who left?

A. Well, they told me all of them went back to work.

Q. Let us get that straight. [2700]

You say that Mr. Roberson and Rube Lloyd told you that someone else had gone back to work after the incident?

(Testimony of Gordon L. Hammond.)

A. All of them went back to work from the office.

Q. And then what did Mr. Roberson or Mr. Rube Lloyd say occurred after all of the men went back to work?

A. Why, they said they were there for a while, and these fellows went home. I don't believe they said they were over at the place at that time. I believe they said they wasn't.

Q. Do you recall anything further that was said at that time by either Mr. Rube Lloyd, E. M. Roberson or yourself?

A. That is all I remember right now.

Q. Did you say anything to them?

A. I told them that was the worst thing they could have done; they shouldn't have done that.

Mr. Clark: May I have that last, please?

Trial Examiner Lindsay: Yes.

(The record referred to was read by the reporter, as set forth above.) [2701]

Q. (By Mr. Mouritsen): Now, did they during the course of that conversation explain to you why a large number of people were present in the office at that time?

A. They told me that they had met there to let the company know that they were satisfied with their work and the working conditions and the management of it.

Q. Well now, after they made that statement to you did Mr. Roberson, Mr. Lloyd and all these other people in the office leave the office?

(Testimony of Gordon L. Hammond.)

A. Well, they did later. I don't know just what time they did, some time later.

Q. Well, they didn't leave immediately, then, is that correct?

A. They were there for a while. I was out for a while and when I came back they were most all of them had gone.

Q. And how long were you away?

A. It could have been a half, or three-quarters of an hour.

Q. Was that the period when you went out and weighed some cotton? A. That is right.

Q. I believe you classified that yesterday as weighing out cotton.

A. Weighing it in.

Q. Weighing it in. [2702]

What was that act that you classify as weighing in cotton? What did that consist of?

A. That was some cotton come in on some trailers, come over to the scale to be weighed and we issue a ticket from the scale house before it goes to the gins.

Q. Well, it was incoming cotton that was to be processed at the plant? A. That is right.

Q. And where did you do that weighing in?

A. At the scale house.

Q. And that is a short distance away from the administration building or the group of offices of the company, isn't that correct?

A. Yes, it is.

(Testimony of Gordon L. Hammond.)

Q. Did you see anyone or talk with anyone during that period while you were weighing in the cotton?

A. Well, the fellows that brought the cotton in, only.

Q. Were they the only ones that you recall seeing on that occasion?

A. While I was out it was. There was a few still there and around there when I got back.

Q. After you weighed in the cotton you went back into the office, is that correct?

A. Went back in the office, yes.

Q. Then did you make out the time cards, the rest of the [2703] time cards? A. I did.

Q. And then did you do anything else in the office? A. No, I didn't.

Q. Did you leave the office at that time?

A. Yes.

Q. Approximately how long were you present then between the time that you arrived, which I believe you testified was about 7:00 o'clock, and the time when you left the office?

A. Oh, something near two hours.

Q. I will ask you if this group of men you noticed about the office, in the outer office, were there or were present when you returned to the plant at or about 7:00 o'clock?

A. Yes, they were, part of them there.

Q. And part of them were still present about two hours later when you finally left the plant?

A. No, they were not.

(Testimony of Gordon L. Hammond.)

Q. Beg pardon? A. No, they wasn't.

Q. They weren't there? None of that group of men was present at the time you left the plant, is that correct? A. I don't believe so.

Q. Well, on that day in question, that is November 18, 1938, you were present at the plant between 7:00 and 8:00 [2704] o'clock in the evening, is that correct? A. Yes, that was.

Q. And you were present at the plant during that entire period of between 7:00 and 8:00 in the evening, is that correct? A. Yes, I was.

Q. I believe you stated upon your direct examination that you knew E. C. Powell?

A. Yes, I do.

Q. Did you know him as "Coon" Powell?

A. Yes, sir.

Q. Did you know him before you came to California? A. No, sir, I did not.

Q. Did you know his parents?

A. I knew of them.

Q. And when did you first meet Mr. E. C. Powell? A. Some time in August 1936.

Q. And did you—what was the extent of your acquaintanceship with him at that time?

A. He came to my house and wanted to know if I could get him some work.

Q. And what—did you become acquainted with him at that time?

A. Well, a day or so later—I don't know just how long—a few days later I did give him some work, is the only thing. [2705]

(Testimony of Gordon L. Hammond.)

Q. And then did he work for the company on and off up until November 18, 1938?

A. Off and on, yes.

Q. And during the period that he worked there did you become better acquainted with him, knowing who he was? A. Well, I would say so.

Q. During that period did you learn that he had had a couple of scrapes in Georgia? Didn't you? A. I heard that, yes.

Q. And during the early part of 1938 you learned that Mr. Powell had been imprisoned on a check charge, didn't you? A. Yes.

Q. And in fact the time when Mr. Powell was imprisoned on a check charge, the District Attorney came to you and obtained a prior check for which there were no funds for use at the preliminary hearing, didn't he? A. No, he didn't.

Mr. Clark: I object to that on the ground it is indefinite, Mr. Examiner. Let us have the check described—a prior check for which there were no funds.

Trial Examiner Lindsay: If the witness knows what the question is, he may answer.

The Witness: No, he did not. [2706]

Q. (By Mr. Mouritsen) Well, didn't—prior to the time when Mr. Powell was imprisoned on this check charge, did anyone from the District Attorney's office ever come to see you regarding a check for \$60.00 that you had endorsed for Mr. Powell?

A. No, sir.

Q. Are you certain of that, Mr. Hammond?

(Testimony of Gordon L. Hammond.)

A. I am.

Q. How long after the time that Mr. Powell was imprisoned—

A. (Interrupting): The District Attorney and none of his officers have ever been to me about the check of Mr. Powell.

Q. Well, did you ever take the check to the District Attorney, or, that is, the check for \$60.00?

A. I did not, no, sir.

Q. Are you certain of that, Mr. Hammond?

A. Yes, sir, I am.

A. So, prior to November of 1938, you knew that Mr. Powell had had a couple of scrapes in Georgia, had been charged with murder in Georgia, and had been convicted in California of a check charge; isn't that correct?

A. No, sir, I did not. I knew of one charge he had been charged of in Georgia on prior to that time.

Q. Well, what did you know—of what charge in Georgia did you know about prior to November of 1938?

A. That was a murder charge. [2707]

Q. And was that a charge upon which Mr. Powell had been convicted?

A. I don't think so. I don't know the nature of the conviction or the trial, even.

Q. But prior to November of 1938, you know of at least two crimes of which Mr. Powell had been either convicted or charged, isn't that correct?

(Testimony of Gordon L. Hammond.)

A. I had heard of them. That was all.

Q. Now, during 1938, November of 1938, up to November 18th, 1938, did Mr. Powell work in the warehouse?

A. Prior to November, 1938?

Q. No. During the month of November, 1938, but prior to November 18th, 1938?

A. Yes.

Q. And Mr. Powell—your testimony is that Mr. Powell did work in the warehouse during that part of November, isn't that correct?

A. Part of the time.

Q. During which part, Mr. Hammond?

A. Well, he was in there most of the time during that time. He was doing the work part of the time.

Q. And during that period, didn't your work at the plant carry you on numerous occasions through the warehouse?

A. Very often.

Q. In fact, practically every day during that period, didn't [2708] it?

A. Several times during the day.

Q. And on any of those occasions that you passed through the warehouse, did you ever see Mr. Powell present?

A. Yes.

Q. Did you, from time to time during that period, stop and pass the time of day with Mr. Powell?

A. Oh, I may have stopped and talked to Mr. Powell some.

Q. Well, as a matter of fact, don't you definitely recall having stopped and talked to him on several occasions during that period?

(Testimony of Gordon L. Hammond.)

A. No specific time, no. It may have been every day some.

Q. Mr. Hammond, is Clyde Sitton, an employee of the plant, a relative of yours? A. He is.

Q. In what manner is he related to you?

A. He is a nephew of mine.

Q. How long has he worked at the plant?

A. He has worked off and on for two and a half years, something like that.

Q. Now, Mr. Hammond, I believe you stated when you were on the stand before that you did not know the names of any Union members prior to November 18th, 1938. Am I correct in that statement? A. Prior to—— [2709]

Q. (Interrupting): November 18th, 1938.

A. The 17th of November, 1938.

Q. Well, let me ask you, then, when did you first learn that—or the names of any employees of the Boswell Company who were employed—who were members of the Union?

A. On the 17th of November, 1938.

Q. And how did you learn the names of any Union members on that date?

A. Mr. Prior told me.

Q. Now, when did this conversation—strike that. Did you have on that occasion a conversation with Mr. Prior? A. I did.

Q. When did that take place?

A. In the morning, around 9:00 o'clock, between 9:00 and 10:00 on the 17th day of November, 1938.

(Testimony of Gordon L. Hammond.)

Q. Nine o'clock in the morning, is that correct?

A. Around that.

Q. And there were present at that conversation what other persons?

A. Mr. Spear and Mr. Farr and Mr. Martin.

Q. Now, what did Mr. Prior say to you at that time regarding the names of any Union members?

A. He told me that he had had a meeting the night before and elected the officers, and he told me Mr. Spear was presi- [2710] dent, was elected president, and Mr. Farr vice-president, and Mr. Martin secretary and treasurer.

Q. Now, did he mention the names of any other Union members? A. No, he did not.

Q. That was the first knowledge that you had of the names of any members of the Union, is that correct? A. That is right.

Q. And at that time, those were the only people that you knew that were members of the Union who were also employees of the plant, is that correct?

A. That was the only ones that I knew of. [2711]

Q. Now, what time during the day did you—at what time during the day did you notify Mr. Steve Griffin that he was to be laid off?

A. Just after 7:00 o'clock that morning.

Q. And at what time during the day did you notify Mr. Johnston that he was to be laid off?

A. The same time.

Q. Are you sure about that? A. Yes.

Q. Where were you when you notified Steve Griffin that he was to be laid off?

(Testimony of Gordon L. Hammond.)

A. It was over near No. 1 and 2 gins between the warehouse and the gin building where they were hauling and sacking planting seed.

Q. Was anyone else present?

A. Yes, there was.

Q. Who else?

A. Paul Morris, George Andrade, and O. O. Hastings, I believe, was there; and there was four or five others out there, by the way, loading up the truck, I believe.

Q. Where did you—where were you when you informed W. R. Johnston that he was to be laid off?

A. To the south end of the No. 1 and 2 gin buildings, between that and the cotton house.

Q. Was that before or after you had told Mr. Steve Griffin [2712] that he was to be laid off?

A. Just after.

Q. And was anyone else present?

A. A fellow by the name of Sailsbury, Stan Sailsbury.

Q. Now, I believe you stated—withdraw that.

Could I have a moment, Mr. Examiner, please?

Trial Examiner Lindsay: Yes.

Q. (By Mr. Mouritsen) I believe you testified on your earlier examination, Mr. Hammond, that Mr. Boyd Ely was also laid off on November 17, 1938, is that correct?

A. No, it was on the 15th.

Q. Well, I believe you testified when you were

(Testimony of Gordon L. Hammond.)

on the stand before that Mr. E. L. Eller was laid off on November 17, 1938, is that correct?

A. That is correct.

Q. And at what time during the day did you inform Mr. Eller that he was to be laid off?

A. Just a few minutes later and—it must have been around 7:30.

Q. And was anyone else—strike that.

Where did you have any conversation with Mr. Eller about his being laid off?

A. Just outside of the No. 3 gin, the back side, near the side track.

Q. Now, was anyone else present? [2713]

A. No, there was not.

Q. Just you and Mr. Eller alone, is that correct?

A. That is correct. I met him there.

Q. And that is Elmer Eller, isn't that correct?

A. Yes.

Q. Now, Mr. Hammond, you are certain that you knew the names of no union members prior to 9:00 o'clock of November 17, 1938, is that correct?

A. That is correct. I have heard rumors, but I never did know.

Mr. Clark: May I have that last answer?

Trial Examiner Lindsay: He said he had heard rumors, but he didn't know.

Mr. Clark: I see.

Q. (By Mr. Mouritsen) And at that time the only names that Mr. Prior gave to you as being members of the union were Mr. Spear, isn't that

(Testimony of Gordon L. Hammond.)

correct, Mr. Farr, and Mr. Martin, isn't that correct?

A. That is correct.

Q. And you are certain of that, is that correct?

A. Yes.

Q. And you are certain that during that conversation with Mr. Prior there were no other names of union members mentioned?

Mr. Clark: Objected to upon the ground it has been asked [2714] and answered several times, Mr. Examiner.

Trial Examiner Lindsay: Well, he may answer.

The Witness: That was all.

Trial Examiner Lindsay: We will adjourn until 2:00 o'clock.

Mr. Clark: At 2 o'clock, Mr. Examiner?

Trial Examiner Lindsay: Yes.

(Whereupon, at 12:00 o'clock noon, an adjournment was taken until 2:00 o'clock p. m., of the same date.) [2715]

After Recess

(Whereupon, at 2:00 o'clock p. m., the hearing was resumed.)

Trial Examiner Lindsay: Hearing called to order.

Mr. Clark: The respondents are ready, Mr. Examiner.

Mr. Mouritsen: Ready for the Board, Mr. Examiner.

Trial Examiner Lindsay: You may proceed.

GORDON L. HAMMOND

the witness on the stand at the time of the recess, having been previously duly sworn, resumed the stand and further testified as follows:

Cross Examination

(Continued)

Q. (By Mr. Mouritsen) Now, Mr. Hammond, may I direct your attention to part of your testimony on June 13, 1939, appearing in Volume XIX of the official transcript at page 2561.

Mr. Clark: Just one minute.

Mr. Mouritsen: Beginning with line 13.

Mr. Clark: Pages what?

Mr. Mouritsen: 2561.

Q. I will tell you, Mr. Hammond, that this was your testimony regarding the meeting, the conference with Mr. Prior, Mr. Martin, Mr. Farr, Lonnie Spear and yourself and the conversation took place in Bill Boswell's office.

Mr. Clark: May I suggest that the record be shown to the witness if he is to be questioned concerning it, Mr. Examiner? [2716]

Trial Examiner Lindsay: Yes.

Q. (By Mr. Mouritsen) There had been, prior to the part I am about to read to you, there had been some discussion about who the officers of the union were and some discussion about men being afraid they would be laid off. The part I have in mind begins with line 13; the question by Mr. Wingrove to yourself was:

(Testimony of Gordon L. Hammond.)

“State what Mr. Spear said and what the reply was, if any.”

And the answer by yourself:

“I don’t know whether Mr. Spear or Mr. Prior said something about the work—one of the two—anyway, during the conversation at that time Mr. Spear said something—asked me something about not laying off any of their men. I told him I didn’t know who the men were, that I had already told that morning that three of them wouldn’t have any more work for them after that day as we would be through sacking the planting seed and we wouldn’t have any more work for them the next few days.

“Mr. Mouritsen: May I have that as to who was making this statement that the witness is now telling?

“The Witness”—that is yourself—“I was making that statement.

“Mr. Wingrove: Very well.

“Q. Will you just continue, Mr. Hammond, please? [2717]

“Mr. Spear told me at that time he would bring me a list of the names the next morning, and Mr. Prior turned around to him and said, ‘No, you can’t do that. That is against the rules of the union.’ ”

Question by Mr. Wingrove: “And who did you understand he intended when he was speaking about not laying any of their men off?

“A. Well, I figured he meant the ones that belonged to the union.

(Testimony of Gordon L. Hammond.)

“Q. Who were these three men you had laid off that morning that you had told Mr. Prior and Mr. Spear had been laid off?

“A. He hadn’t been laid off. I told him we would get through that day. He wouldn’t be then, but he would be that night when we got through that morning.

“Q. Who were those three men?”

The answer by yourself: “Stephen Griffin, W. R. Johnston, and E. L. Eller.”

Now, Mr. Hammond—I will ask you—you have followed me as I read that testimony to you, is that correct? A. That is right.

Q. And I have read it to you correctly, is that correct? A. Yes.

Q. Now, I will ask you if you recall giving that testimony on June 13, Mr. Hammond. [2718]

A. Yes, I do.

Q. And that testimony was correct, was it not?

A. Yes.

Mr. Clark: Well, Mr. Examiner, I move that the reading of that testimony be physically stricken from the record upon the ground that it can serve no purpose whatsoever to have it repeated and there is no inconsistency whatsoever shown between that and the testimony which Mr. Hammond gave this morning.

Trial Examiner Lindsay: Well, the record will speak for itself. It may remain. [2719]

The Witness: There is one thing there I would like to say.

Q. (By Mr. Mouritsen) I beg your pardon?

(Testimony of Gordon L. Hammond.)

A. There is one explanation I would like to make of that.

Q. Certainly, Mr. Hammond, any explanation you desire to make.

A. At that time—I don't know yet—I did not know on the 17th that those fellows belonged to the Union.

Mr. Clark: And by "those fellows," whom do you mean?

The Witness: Those three men.

Mr. Clark: That is, Griffin, Johnston and Eller?

The Witness: Yes. If I understand that, those that I told them that morning that I had laid three men off—I had told three men that morning that we would be through that afternoon, we wouldn't have any more work for them for a few days, but I don't—I didn't mean to say that I knew they belonged to any union.

Q. (By Mr. Mouritsen) You didn't have that intent at all, is that correct, Mr. Hammond?

A. That is right.

Q. Now, Mr. Hammond, let me ask you this: Didn't you lay off more than three men on the morning of November 17th, 1938?

A. No, that is all I remember. We were aiming to close down Number 4 gin, which would have been more, but we didn't close down. [2720]

Q. Now, as a matter of fact, were those three men that you have named the only three men who were laid off on November 17th, 1938?

(Testimony of Gordon L. Hammond.)

A. They were the only ones I remember of right now.

Mr. Mouritsen: May I see Board's Exhibit 3, please?

(The document referred to was passed to Mr. Mouritsen.)

Q. (By Mr. Mouritsen) Well, let's see.

I believe you testified earlier this morning that there were a number of men present at the time when you talked with Steve Griffin, is that correct?

A. Yes, three or four, three others.

Q. Who were those other men that were present?

Mr. Clark: Objected on the ground it has been asked and answered. It has all been covered this morning.

Trial Examiner Lindsay: He may answer.

The Witness: George Andrade, Paul Morris and O. O. Hastings.

Q. (By Mr. Mouritsen) Are those the only ones who were present?

A. Well, that is, the only ones near us. There were others close by loading up a truck, 15 or 20 feet, and possibly 25. [2721]

Q. And at that time didn't you tell O. O. Hastings that he was laid off, too?

A. No, I did not.

Q. Or Morris? A. No.

Q. As a matter of fact, wasn't Paul Morris laid off on that day, that is, November 17, 1938?

(Testimony of Gordon L. Hammond.)

A. I don't believe he was. He was laid off a few days later, I believe.

Q. And your best recollection is, Mr. Hammond, that there were only those three men laid off on November 17th?

Mr. Clark: Objected to on the ground it has been asked and answered several times now, Mr. Examiner.

Trial Examiner Lindsay: Sustained.

Q. (By Mr. Mouritsen) Now, Mr. Hammond, may I direct your attention to your—part of your testimony given on June 14, 1939, occurring in Volume XX of the official transcript at page 26—at the bottom of page 2606 and 2607.

Do you have that, counsel?

Mr. Clark: Yes.

What line, please?

Q. (By Mr. Mouritsen) Well, I will instruct you, Mr. Hammond, that this was with reference to a conversation that you had with Mr. Spear on November 19, 1938, held in your office somewhere around 3:00 o'clock in the afternoon, and start-[2722] ing with line—at which only yourself and Mr. Spear were present—and the question beginning on line 12 was put to you, I believe, by Mr. Wingrove as follows:

“Q. Will you kindly state the substance of the conversation that you had with Mr. Spear at that time and which he had with you?”

(Testimony of Gordon L. Hammond.)

The answer, by yourself:

“I asked Mr. Spear to forget his affiliations with the union and I would forget Boswell Company; that I would like to know what he thought was the cause of the difficulty they had the day before.

“He told me when he came to work that morning some one of them—he didn’t say who or I don’t believe I asked him—who told him that they were going to have a meeting at 10:00 o’clock and that he said he told them it was fine, that he thought they were going to ask him or talk to him about the union.

“When they got together they asked him so many questions and so fast he couldn’t answer them and someone in the crowd, after they got to where he couldn’t answer the questions, said, ‘Let’s throw him out,’ and they proceeded to do so.

“He told me that he didn’t much blame them for doing what they did, he didn’t know much about the union anyway, and that he was glad they did do what they did.”

Do you recall giving that testimony, Mr. Hammond? A. Yes. [2723]

Q. Now, did you hear Mr. Spear testify about the occurrences of November 18, 1938, and the part that was played by himself there?

A. Yes, I believe I did.

Q. About these men taking hold of his arms

(Testimony of Gordon L. Hammond.)

and somebody pushing him from the back and taking him to the office? A. Yes.

Q. Do you recall that testimony?

Do you recall the testimony he gave that he a day or so afterwards went to see a doctor about his physical condition? A. Yes. [2724]

Q. Now, Mr. Hammond, what did you understand by Mr. Spear's statement in the quotation that I read to you that he was glad they did do what they did?

A. Well, the way I understand it was that as it was, there was no violence, and if it had kept on, there might have been.

Q. Did you understand that Mr. Spear referred to the fact that he was taken by the arm and pushed from the back, from the plant to the office, that morning, and that he said he was glad they did it?

Mr. Clark: Objected to on the ground it has already been asked and answered. The witness has explained what he meant, what Gordon Hammond meant by the statement he made in the testimony.

Trial Examiner Lindsay. I don't think the record is plain. I would like to have it answered.

Read the question.

(The question referred to was read by the reporter, as set forth above.)

The Witness: I still don't know as I understand it.

Mr. Clark: I object to the question on the ground it is ambiguous and mis-states the record in that

(Testimony of Gordon L. Hammond.)

the statement referred to is that made by Mr. Hammond in his own testimony, and if it is to be pursued——

Trial Examiner Lindsay (Interrupting): I understand, and that is the assumption I get from the question. [2725]

What is about that question you don't understand, Mr. Hammond?

Read the question again.

(The question referred to was read by the reporter, as set forth above.)

Mr. Clark: I object on the ground the question is ambiguous, and suggest the witness be shown the testimony and until he gets it——

Trial Examiner Lindsay (Interrupting): The attorney has a right to examine the witness, and if he doesn't understand the question, that is one thing. If he didn't, the attorney may explain it to him or reframe his question.

You may reframe the question if he doesn't understand it.

Q. (By Mr. Mouritsen) Is there any part of that question that you don't understand, Mr. Hammond, in order that I can explain it to you?

A. Could I hear it read again?

Trial Examiner Lindsay: Yes. Will you read it again.

(The question referred to was read by the reporter, as set forth above.) [2726]

(Testimony of Gordon L. Hammond.)

The Witness: Yes, that is the way I understand it.

Trial Examiner Lindsay: You understand the question?

The Witness: If I do, that would be my answer. I believe I understand it. If I do that is the answer.

Mr. Clark: May I ask, Mr. Examiner, whether the witness just said he wasn't sure whether he understood it?

Trial Examiner Lindsay: You may ask him. He has answered it twice. Answer it again if you wish, if you have any other answer.

Mr. Clark: All I want to know is whether Mr. Hammond just said he wasn't sure whether he understood it.

Is that what you said, Mr. Hammond?

The Witness: That is what I said.

Trial Examiner Lindsay: What do you mean by that?

The Witness: Well, it sounds like there is two questions there.

Trial Examiner Lindsay: You still don't understand the question, is that it?

The Witness: That is it.

Trial Examiner Lindsay: Well, that is what we are trying to find out, Mr. Hammond. If you don't understand it, Mr. Mouritsen will explain it.

Q. (By Mr. Mouritsen) Let me proceed in this way, Mr. Hammond.

(Testimony of Gordon L. Hammond.)

Now, you recall testifying about this conversation you [2727] had with Mr. L. A. Spear on the morning of November 19, 1938, is that correct?

Mr. Clark: Just one moment. This appears to be a conversation held on the afternoon at 3:00 o'clock on the afternoon of November 19th.

Mr. Mouritsen: Did I say "morning"?

Mr. Clark: I think you did.

Mr. Mouritsen: Very well.

On the afternoon of November 19, 1938.

The Witness: Yes, I remember.

Q. (By Mr. Mouritsen) And I believe you stated that you recalled the rest of the testimony that I read, is that correct? A. Yes.

Q. During that testimony do you recall making the statement—or Mr. Spear—strike that.

Do you recall testifying that Mr. Spear said to you, in substance, that he didn't, or he told me that "he didn't much blame them for doing what they did, he didn't know much about the union anyway, that he was glad they did do what they did?" Do you recall testifying to that effect? A. Yes.

Q. And you had been prior to that time, in the same conversation, talking about the events of November 19, 1938, hadn't you? [2728] A. Yes.

Q. And included in those events or in the description of the events at that time was the fact that Mr. Spear had been taken by the arms and somebody had pushed him from the back and he had been propelled from the plant yard to the office, is that correct? A. That is correct.

(Testimony of Gordon L. Hammond.)

Q. Now, I am asking you, did you understand that Mr. Spear referred to that act of his being propelled from the yard to the office when he stated to you that he was glad they did do what they did?

A. That is the way I understood it. [2729]

Q. Now, Mr. Hammond, I believe we stipulated to the effect that in 1937, in 1938 and in 1939, the lowest period of employment occurred in April of each of those respective years.

Is that your recollection of employment at the plant, that the lowest period of the employment occurred during those three times in those three years?

A. Yes, that is the way I understood it.

Q. Now, we took in each instance in our stipulation a specific day. I will ask you, however, if it wasn't true, that is, those periods, namely surrounding a certain day in April of each year, that employment was at its lowest ebb in each of these years?

A. Well, I would say yes.

Mr. Clark: May I have the question read back?

(The record referred to was read by the reporter, as set forth above.)

Mr. Mouritsen: Perhaps I can explain that.

Q. Now, Mr. Hammond, I believe our stipulation was to the effect that in 1937, on April 22nd, you had the lowest number of men upon the payroll for that season?

A. Well, I couldn't say on that date it was. Mr. Carr got those figures up. I asked him to do that.

(Testimony of Gordon L. Hammond.)

That is what he gave me. I didn't check them back.

Q. There is no question about the date, but I want to know, isn't it true that not only did you have the lowest number on [2730] April 22nd, but that you had a low condition of employment preceding that date for a couple of weeks, anyway, and a low period of employment for a couple of weeks following that day?

A. Could have been.

Q. Isn't it true that that was the case?

A. I don't know that.

Q. Well, I will ask you if in 1938, on April 14th, for several weeks preceding that date and some weeks after that date, you didn't have a low condition of employment relative or comparable to the fact that you only had 45 men on the payroll?

A. It was low; that is our lowest employment season of the year.

Q. And is the same true of the year 1939, that for some weeks prior to April 22nd and for some weeks subsequent to April 22nd, you had a number of men on the payroll comparable to 55 men?

Mr. Clark: That is the present year.

The Witness: Yes.

Q. (By Mr. Mouritsen) Now, you testified, Mr. Hammond, did you not, that the 38-39 season was considerably shorter than the 37-38 season? Is that correct?

A. That is correct.

Q. However, at your lowest condition, or the lowest period when you had the lowest number of

(Testimony of Gordon L. Hammond.)

men on the payroll in each of these respective seasons, you had approximately ten more in [2731] '39 than you did in '38, isn't that correct?

Mr. Clark: Objected to upon the ground it is argumentative, Mr. Examiner, something that is demonstrated by the record.

Mr. Mouritsen: It is merely preliminary to other questions, Mr. Examiner.

Trial Examiner Lindsay: Well, it may stand. [2732]

Q. (By Mr. Mouritsen) Now in general, Mr. Hammond, what type or classification of men work during the period when you have the least number of men employed?

A. That is between seasons; that would be some of what we might call key men, ginners and expeller men, linter men.

Q. And in general would you say that they are the older and more experienced employees?

A. That is right.

Q. And they don't—strike that.

However in these periods the men don't operate the gins or the oil mill, isn't that true?

A. Not the gins. The oil mill might be sometimes operated in that season, but not often.

Q. Now, what do—in these low—in these periods when you have the least number of men employed, what work do the former ginners and oil men do?

A. They do repairing and odd jobs, other work than besides ginning and mill work.

(Testimony of Gordon L. Hammond.)

Q. Now, during the period surrounding April 14, 1938, when you had the least number of men employed in the 1937-38 season, there were a number of the men named in the complaint who worked during that period, isn't that true?

A. Sometimes.

Q. And during the period surrounding April 22, 1939, again when you had the least number of men employed, none of these [2733] men who are named in the complaint, are working, isn't that true?

Mr. Clark: Well now, just one moment, Mr. Examiner. I don't know that is a fact and I am sure that Mr. Hammond doesn't unless the names are called to his attention. The record in this case shows that various union men or members of this union have been employed more or less continuously since November 18, and if he is to be asked a question such as that, I suggest that the names of the men concerning whom the question concerns be directed to his attention rather than simply a general question such as that.

Trial Examiner Lindsay: Read the question, please.

(The record referred to was read by the reporter, as set forth above.)

Mr. Clark: My objection goes to the generality, you see, of simply saying none of the men named in the complaint.

(Testimony of Gordon L. Hammond.)

Trial Examiner Lindsay: He may answer the question.

Mr. Clark: If he knows.

Trial Examiner Lindsay: No one will answer a question if they don't know, Mr. Clark.

Proceed.

The Witness: Well, I don't believe I can say that they all of them worked that is named in the complaint. I believe Joe Briley is named in the complaint and he has worked part of the time, not all of the time.

Q. (By Mr. Mouritsen) But he is the only one, isn't that [2734] true?

Mr. Clark: Same objection, Mr. Examiner, unless the witness shows that he knows those named in the complaint.

Trial Examiner Lindsay: Same ruling.

The Witness: He is the only one I remember that I can recall right now that is in the mill.

Q. (By Mr. Mouritsen) And in the period 19—in the period surrounding April 22, 1939, there are approximately ten men who have never worked in a comparable period of operation of the company before, isn't that true?

A. I can't say it is right offhand. I don't remember.

Q. Well, if I tell you that in 19—in the period surrounding April 14, 1938, there were 45 men who worked and if I tell you that in the period surrounding April 22, 1939, there were 55 men who

(Testimony of Gordon L. Hammond.)

worked, isn't it true that you have 5,—10 new men who worked in 1939 who did not work before in a similar period of operation of the company?

Mr. Clark: Objected to upon the ground it is argumentative, Mr. Examiner.

Trial Examiner Lindsay: He may answer.

The Witness: No, I can't say that they are new men. It may have been that they have worked some each year, part of them, any part of the others did part of the time and part they did not. I can't separate them.

Q. (By Mr. Mouritsen) I believe you testified yesterday, [2735] Mr. Hammond, regarding certain men who did not work at the plant under your supervision but who worked elsewhere for the company or one of its affiliates. You recall that testimony? A. I believe so.

Q. Now, I will ask you if it isn't a fact that W. R. Johnston worked for the company at some time when he was not working in the plant under your supervision but was working out on one of the outlying properties of the company?

Mr. Clark: I object to that on the ground it is incompetent, irrelevant and immaterial.

Trial Examiner Lindsay: He may answer.

The Witness: (Pause) I don't recall.

Q. (By Mr. Mouritsen): Wasn't his nickname "Cowboy" Johnston?

A. I believe I have heard him called that.

Q. Didn't he work as a cowboy for the company

(Testimony of Gordon L. Hammond.)

prior to the time he came into the plant under your supervision?

A. He may have. I don't remember. [2736]

Q. Now, I will ask you if Steve Griffin didn't at some time during the course of his employment with the Company work some place other than the plant and under your supervision?

Mr. Clark: You mean for the Boswell Company?

Mr. Mouritsen: That is correct.

The Witness: I don't believe so.

Q. (By Mr. Mouritsen): Didn't he, during the period in May or June of 1938, do some work on the ditches or levees for the Company out west of town in the Lake region?

A. I don't recall it. I don't believe he did.

Q. I will ask you if Eugene Clark Ely didn't do some work out in one of the pumping plants for the Company that was not under your direct supervision at the plant, and I will fix the period as sometime during the year 1938?

A. Well, he helped install some pumps out there, but the work was supervised by me.

Q. Well, didn't you delegate the installation of pumps to either Busby or Lloyd? A. Lloyd.

Q. And wasn't that work done away from the plant in the spring of 1938? A. No.

Q. Where were the pumps installed, Mr. Hammond? A. On the Reclamation District 739.

Q. 39 or 49? [2737]

A. 39 is what it was called, the Lovelace District.

(Testimony of Gordon L. Hammond.)

Q. How far is that from the plant here in Corcoran? A. About twenty miles.

Q. What?

A. About twenty miles, I believe.

Q. Now, as a matter of fact, from time to time in the past haven't George Andrade, Briley, Farr, Martin, Powell, Spear and Wingo done work away from the plant that wasn't under your direct supervision, that is, for the Company?

Mr. Clark: Objected to on the ground it is incompetent, irrelevant and immaterial.

Trial Examiner Lindsay: He may answer.

The Witness: Joe Briley has worked for the District, Reclamation District No. 749 quite a bit that wasn't under my supervision, before he went to work at the plant.

Q. (By Mr. Mouritsen): And how about the other men I named, George Andrade; didn't he work out on the pump or levee during the spring of 1938 for the Company and not under your supervision? A. I don't recall.

Q. How about O. L. Farr?

A. I don't remember him. I don't believe so.

Q. How about R. K. Martin?

A. I don't think so.

Q. Powell? E. C. Powell? [2738]

A. I would say not.

Q. Spear?

A. (Pause) I don't recall Mr. Spear going out. He could have gone out a few days, not very much, if any.

(Testimony of Gordon L. Hammond.)

Q. How about Wingo, H. N. Wingo?

A. Wingo worked out in the District some during the spring of 1938.

Q. How about Walter Winslow? Hasn't he from time to time worked for the Company away from the plant, and not under your direct supervision?

A. Well, if he has, it has been on one of the ranches which I wouldn't know.

Q. Well, didn't Walter Winslow—do you recall that Walter Winslow worked out on the pumps or levees during the spring of 1938 for the Company but not under your supervision?

A. I don't recall Walter Winslow going out.

Q. How about Boyd Ely? Do you have any recollection in that matter?

A. Boyd Ely took care of some pumps out in the District under my supervision.

Q. What was that? What did he do with some pumps out there under your supervision?

A. Taking care of some pumps, the operation of them.

Q. The work was done away from the plant, is that correct?

A. It was away from the plant. [2739]

Q. How about L. E. Ely. Did he ever do any work for the Company not under your direct supervision, and was the work away from the plant?

A. I don't remember him doing any work out there.

(Testimony of Gordon L. Hammond.)

Q. How about J. B. Gilmore? Did he ever do any work of that type?

A. I couldn't say. I don't remember him doing any. He could have, but I don't believe he did.

Q. Now, during the period around November 26th, 1938 and several days thereafter, I believe you testified that you had two different conversations with Mr. Prior, is that correct?

A. Yes, I believe so.

Q. And I will ask you if, upon the first occasion, Mr. Prior didn't request that the men named in the complaint, or in the amended complaint, be returned to work?

A. He asked me if I would take them back in a body to work. [2740]

Q. And I will ask you if on the second occasion—second conversation about which you testified he didn't ask you that the men named in the complaint be returned to work?

A. The second day was when he requested them in a body. The day before he didn't ask to take them back in a body.

Q. He asked you individually the first day?

A. Not individually. He asked me about taking them back—he asked about taking them back, and I said any day that we had work for them. And he asked me about the others and I told him whenever we had work for them we will put them to work that day.

Q. Did you put any of them to work that day?

(Testimony of Gordon L. Hammond.)

A. No.

Q. And the second day he requested that all of them be returned to work? A. Yes.

Q. After that time did any of them go to work?

A. No, they did not.

Q. And I believe you stated that on the second occasion he asked you about a conference—about arranging a conference with Mr. Louis T. Robinson; is that a correct statement of your testimony?

A. Yes.

Q. And I believe that such a conference was arranged by yourself with Mr. Robinson, is that correct? [2741]

A. That is correct.

Q. Now, were you present at the conference—the following conference that took place between Louis T. Robinson, Mr. Prior, and I believe a number of other employees, that has been identified as taking place on or about November 28, 1938?

Mr. Clark: Now, to which I object, Mr. Examiner, on the ground that again the record is misstated.

Mr. Mouritsen: I am merely trying to find out.

Mr. Clark: There is no evidence that there is a conference between Mr. Robinson or Prior or anyone else on November 28th.

Mr. Robinson's testimony was that there was no one else present so far as he can remember.

Trial Examiner Lindsay: That is right.

Q. (By Mr. Mouritsen): I take it you weren't

(Testimony of Gordon L. Hammond.)

present at any conference with Mr. Robinson and Mr. Prior after—or, on or about November 28, 1938?

A. No, I was not.

Q. Well now, I will ask you if on or about January 17, 1939, you were present at a conference at which were present a number of other employees of the company and Mr. Maurice Howard of the National Labor Relations Board?

A. No, I wasn't present.

Q. You weren't present at that time? [2742]

A. No.

Q. Now, Mr. Hammond, I will show you Board's Exhibit 25 which purports to be a memorandum from yourself to Mr. L. T. Robinson dated November 19, 1938, and I will ask you at what time during the day of November 19, 1938, that was written, if it was written on that day?

A. Late in the afternoon.

Q. And I would like to ask you, Mr. Hammond, whether or not you made an investigation before you wrote this memorandum that is Board's Exhibit 25?

A. Yes, I did.

Q. And with whom did you speak before you prepared the memorandum that is Board's Exhibit 25?

A. Well, quite a number of the employees.

Q. How did you talk to them? Did you talk to them in a body or did you talk to them singly or part of them singly, or part of them in a body?

A. Both ways.

(Testimony of Gordon L. Hammond.)

Trial Examiner Lindsay: What is the number of that, please?

Mr. Mouritsen: Board's Exhibit 25, Mr. Examiner.

Q. I will ask you who the W. C. Nichols is that you name in Board's Exhibit 25?

A. He is a carpenter, a helper, repairman.

Q. Does his work ordinarily keep him in the plant? [2743]

Mr. Clark: May I have that, please?

Trial Examiner Lindsay: Yes. Read the question.

(The question referred to was read by the reporter, as set forth above.)

The Witness: Not all of the time.

Q. (By Mr. Mouritsen): He works in and out of the plant, is that correct?

A. That is right.

Q. Now, from whom did you get the information that is contained in here in this part that I will read to you: "Then W. C. Nichols got up some place where he could ask Spear outright if he understood him to say that they were taking charge of all of the work, and Spear answered yes"?

Do you recall from whom you got that information?

A. I got that from Mr. Nichols, Mr. Brown, Rube Lloyd, Mr. Langford, Mr. Winslow, and Stan Sailsbury. I believe that is all that I can remember now. [2744]

(Testimony of Gordon L. Hammond.)

Q. I believe you stated you had a conversation with Mr. Spear on that—on the morning of November—no, that was at 3:00 o'clock in the afternoon of November 19th, 1938?

A. 2:00 to 3:00, somewhere in there.

Q. Was that before you wrote Board's Exhibit 25? A. It was.

Q. Did you talk with any of the other Union members before you wrote Board's Exhibit 25?

A. No.

Q. Spear was the only one, is that correct?

A. The only one.

Q. And you have given us all of the—you have covered the conversation you had with Mr. Spear in your prior testimony, isn't that true?

A. Yes.

Q. And he was the only one to whom you talked connected with the Union? A. Yes.

Q. And most of this other information which you obtained—or that is, contained in Board's Exhibit 25—came from non-union members, isn't that correct?

A. Yes, as far as I know, it did.

Q. And in most instances, in order to obtain your information, you had men who were present during the occurrences of November 18th, 1938, didn't you? [2745]

Mr. Clark: Just a minute, Mr. Examiner. I will object to that upon the ground it is argumentative, assuming something not in evidence, is am-

(Testimony of Gordon L. Hammond.)

biguous; as I understand the question it is you had men who were present.

Trial Examiner Lindsay: Read the question.

(The question referred to was read by the reporter, as set forth above.)

Mr. Mouritsen: I will reframe it.

Q. In other words, you wanted to get the——

Mr. Clark (Interrupting): Mr. Examiner, I would like to hear that question if I might.

Mr. Mouritsen: I will withdraw that question.

Trial Examiner Lindsay: As long as it is withdrawn, proceed.

Q. (By Mr. Mouritsen): I will ask you, Mr. Hammond, if you didn't desire to secure first-hand information and go to the men who had participated in the occurrences of the morning of November 18th, 1938, namely, the fact that certain men were propelled from the plant on that date?

Mr. Clark: I will object to that on the ground it misstates the record. There was no one propelled from the plant on that or any other date, as shown by the undisputed testimony in this case. The only propulsion was Mr. Spear from the gin over to the office.

Trial Examiner Lindsay: Proceed. He may answer. [2746]

The Witness: I talked to the employees. I talked to the employees that were in the crowd. I don't know what part they took. They didn't give any.

(Testimony of Gordon L. Hammond.)

Q. (By Mr. Mouritsen): Did you talk with Mr. Sailsbury? A. The next day I did.

Q. When; on November 19th, 1938?

A. Yes.

Q. I mean prior to the time you wrote Board's Exhibit 25? A. That is right.

Q. And did you talk with Mr. Brown?

A. Yes.

Q. Mr. Brown is an engineer down there, isn't he? A. Yes.

Q. And did you talk with Mr. Tisdale?

A. I believe I did previous to that.

Q. Mr. Tisdale was an employee of the Company at that time? A. Yes.

Q. And did you talk with Mr. Duncan?

A. No.

Q. Mr. Duncan was an employee at the plant at that time, wasn't he? A. He was.

Q. Do you know his first name or initials?

A. John. John Duncan.

Q. Well, is it true, then, to state, Mr. Gordon Hammond, that [2747] you obtained the information that you have incorporated in Board's Exhibit 25 from non-union employees of the Company?

A. I can't say that. I don't know if they are or if they are not.

Mr. Clark: In addition, the record shows he talked to Mr. Spear, Mr. Examiner, despite the way counsel is putting his question.

Q. (By Mr. Mouritsen): I will ask you if you

(Testimony of Gordon L. Hammond.)

talked with Mr. Rube Lloyd with reference to any information that you incorporated in Board's Exhibit 25? A. Yes, I did.

Q. Now, what work does Rube Lloyd do there?

A. He is a carpenter.

Q. Does he from time to time have a number of other men under his supervision, directing their work? A. Not around the plant, no.

Q. But when he goes out and does work outside of the plant, he takes a number of men to work under his supervision, is that correct?

A. Yes, he takes the men that I designate for him to take and does jobs outside.

Q. And on such occasions, do you delegate to him the authority to direct the work of these other men and tell them how it is to be done?

Mr. Clark: Objected to on the ground it calls for a con- [2748] clusion of the witness as to what delegation of authority is.

Trial Examiner Lindsay: He may answer.

The Witness: I don't believe I understand what the question was.

Trial Examiner Lindsay: Read the question.

(The question referred to was read by the reporter, as set forth above.)

The Witness: He directs the work, yes.

Q. (By Mr. Mouritsen): Well, on such occasions in the past as he has gone out and done construction work outside of the plant, have you told

(Testimony of Gordon L. Hammond.)

him that he is to take charge of the work and to direct the work of these other men with him?

A. Well, when we take an outside job, I usually go with them—or, I do go with them and we lay out the work, and he takes the men and does the work.

Q. Well, now, on such occasions in the past haven't you told him to direct the work of these other men?

A. He does the work of directing the men.

Mr. Clark: May I have that, please? I can't hear any of the answer.

Trial Examiner Lindsay: Yes, Read the answer.

(The answer referred to was read by the reporter, as set forth above.)

Mr. Clark: Is that what you said, he does the work of directing the men? [2749]

The Witness: He does direct the men on a job like that.

Q. (By Mr. Mouritsen): Now, I will ask you, Mr. Hammond, if Rube Lloyd is also known as R. B. Lloyd?

A. Yes, that is right.

Q. I will ask you if there is any other carpenter at the plant who receives as much as \$100.00 every two weeks?

Mr. Clark: I object to that on the ground it is incompetent, irrelevant and immaterial, Mr. Examiner.

Trial Examiner Lindsay: He may answer.

(Testimony of Gordon L. Hammond.)

The Witness: I don't believe I know what the question was. [2750]

Trial Examiner Lindsay: Read the question.

(The question referred to was read by the reporter, as set forth above.)

The Witness: No, I don't think so.

Mr. Mouritsen: I think that is all.

Mr. Clark: May we have a recess at this time, Mr. Examiner.

Trial Examiner Lindsay: Yes. We will take a recess.

(At this point a short recess was taken, after which the hearing proceeded as follows:)

Trial Examiner Lindsay: Hearing called to order. You may proceed.

Redirect Examination

Q. (By Mr. Clark): Now, Mr. Hammond, will you please speak up a little louder so we can hear you.

Will you please tell us whether or not all social security data for all employees hired at or through the Corcoran plant of the Boswell Company is forwarded by the office here to Los Angeles?

A. Yes, it is.

Q. And is that true whether the men work at the plant on the machinery there or on some of these outside jobs you described during your cross examination? A. Yes, that is true.

Q. Now, will you please also tell us, Mr. Ham-

(Testimony of Gordon L. Hammond.)

mond, whether [2751] or not Ruben Lloyd, for instance, keeps the time of the men whom he might use to do a certain carpenter job?

A. No, he does not.

Q. Is the same true of the other persons who have been mentioned here as being in charge of employees for the purpose of accomplishing work, namely Tom Hammond, Joe Hammond, Mr. Busby, Bill Robinson, and Mr. Mize, namely, to keep the time of any men who might be working with them?

A. No, they don't.

Q. Am I correct in stating that the time of these men is kept by you only?

A. Yes, that is true.

Q. Now, I next direct your attention, Mr. Hammond, to the conversations you have told us about having with Mr. Prior just before November 28 of last year. Have you those incidents in mind?

A. Yes, I believe so.

Q. I think you placed them as being around the 26th or 27th of November.

Do you remember that?

A. Yes, the 28th or somewhere along in there.

Q. Some time before Mr. Prior asked you to make the appointment for him with Mr. Louie Robinson, is that correct?

A. That is right.

Q. All right. [2752]

Now, will you please tell us again, as nearly as you remember, what Mr. Prior said to you and what you said to him on the occasion of this first conversation at that time?

(Testimony of Gordon L. Hammond.)

Mr. Mouritsen: I will object to that as being already asked and answered.

Mr. Clark: It was covered on cross examination, Mr. Examiner.

Trial Examiner Lindsay: He may answer.

Q. (By Mr. Clark): Just reconstruct it as best you can for us.

A. He came in and asked—first he asked if Mr. Robinson was in. I told him he wasn't. Then he asked me if he could talk to me for a while and we went into W. W. Boswell's office and he asked about putting those men back to work that was off.

Q. Did he name the men? A. No.

Q. How did he describe them to you?

A. Well, he described them to me as the fellows that left on the 18th.

Q. All right.

Now, what if anything did he say about your putting them back to work, Mr. Hammond?

A. He asked me if I would put them back to work. I told him I would where we had work for them. [2753]

He asked me about the others. I told him we would put them back to work as soon as we had work.

Q. I see.

Now, was that substantially the extent of that conversation?

A. Yes, as well as I remember.

Q. All right.

(Testimony of Gordon L. Hammond.)

Now, when did you next have a further conversation with Mr. Prior?

A. The following morning.

Q. And will you please tell us what if anything was said, what he said to you on that occasion and what you said to him concerning that same subject matter?

A. Well, he asked me about the same thing, about those fellows going back to work, putting them back in a body. I told him we didn't have work for them all to put them back to work in a body. He asked me then if I couldn't take them, let them tear down stacks of cake and re-stack them in the warehouse for two or three days. I told him I couldn't do that.

Q. All right.

Now, can you remember, just in substance, Mr. Hammond, how or in what manner Mr. Prior asked you to take all these men back in a body, that is, substantially what he said to you? [2754]

A. Well, that is about what he said to me.

Q. Just repeat it for us if you can, as nearly as you can remember.

Trial Examiner Lindsay: I think he has just gone over that.

Mr. Clark: Very well. All right.

Q. Now, at any time subsequent to this last conversation between you and Mr. Prior, Mr. Hammond, did any of these men whom he identified to you as being those who had left on the 18th ever apply for you to work?

(Testimony of Gordon L. Hammond.)

A. No, they have not.

Q. Now, are you familiar with the fact as shown by the record in this case that those men, or some of them, were paid by the Boswell Company for a period of time after November 18th?

A. Yes, they were.

Q. Well, you are familiar with that fact, are you? A. Yes.

Q. Will you please tell us what, just generally, the basis for that payment was, what they were paid for?

Mr. Mouritsen: I will object to that upon that on the ground it calls for a conclusion of the witness.

Mr. Clark: If he knows, that is what I want to ask him.

Trial Examiner Lindsay: Read the question.

(The record referred to was read by the reporter, as set [2755] forth above.)

Q. (By Mr. Clark): Do you understand my question, Mr. Hammond? A. I believe so.

Q. Will you answer it please?

Trial Examiner Lindsay: I haven't ruled on it.

Mr. Clark: I thought you had, Mr. Examiner. I am sorry.

Trial Examiner Lindsay: Well, it has been gone into twice now.

Mr. Clark: I know it has.

Trial Examiner Lindsay: But I will let him answer.

(Testimony of Gordon L. Hammond.)

The Witness: Well, Mr. Robinson told them that they would be carried on the payroll on the morning of the 19th until this matter was settled, or something to that effect. I don't remember just what.

Mr. Clark: I see.

Q. Do you know how the amounts of payment were arrived at, what the basis for the payments were?

Mr. Mouritsen: I object to that on the ground it has already just been answered by the witness and has been answered two or three times prior to that.

Mr. Clark: I will submit that so long as I am half way into it, I think I have the right to exhaust it.

Trial Examiner Lindsay: May I have the question?

(The record referred to was read by the reporter, as set [2756] forth above.)

Mr. Clark: I will withdraw that question.

Q. Do you know how the amounts of the payments for each particular man were arrived at?

A. Yes.

Q. Will you please state what the fact is in that regard?

A. It was arrived at from the time the machinery run and the other employees doing the same type of work as these fellows was or would be doing.

(Testimony of Gordon L. Hammond.)

Q. I see.

In other words, what they would have had had they been working, is that right?

Mr. Mouritsen: I object to that as already asked and answered, and I object to counsel testifying.

Trial Examiner Lindsay: Sustained.

Q. (By Mr. Clark): Mr. Hammond, where is that billboard you described for us in your cross examination in the machine shop, on the inside or outside of the building?

A. It is on the inside.

Q. I see.

And how far inside the building from the entrance nearest to it is the billboard located?

A. About 40 feet.

Q. The bulletin board?

A. About 40 feet. [2757]

Q. I see.

How big is it, do you know?

A. It is around three by four feet.

Q. What kind of supplies are issued from the window which you have told us was next—this bulletin board, was next to?

A. Our repair parts, bolts, nails.

Q. Having to do with the operation of the machines at the plant, is that right?

A. Yes.

Q. When you went down to Los Angeles on the morning of November 18th of last year, will you please tell us how you found your way to this ad-

(Testimony of Gordon L. Hammond.)

dress for which you were bound when you left Corcoran?

A. The lady that we had taken down.

Q. Did she direct you after you got into Los Angeles? A. Yes.

Q. Concerning the streets you were to follow?

A. She did.

Q. Have you any correction you wish to make in your testimony, Mr. Hammond, regarding the people whom you took with you that date in your automobile? A. Yes.

Q. Please state whether you have or not.

A. Yes, I have.

Mr. Mouritsen: I will object to that on the ground he [2758] is impeaching his own witnesses.

Mr. Clark: I am not impeaching him.

Trial Examiner Lindsay: He may ask the question. (Laughter)

Trial Examiner Lindsay: Now, just a minute.

The Witness: I made the statement yesterday that my two children went with me, which I found out since they didn't that day.

Mr. Clark: I see.

Q. And have you discussed that with your wife?

A. Yes.

Q. Had you taken a trip down to Los Angeles some few days before the 18th?

A. Yes, about 10 or 12 days before.

Q. That is before November 18th?

A. Yes.

(Testimony of Gordon L. Hammond.)

Q. And on that occasion did these two youngsters go with you? A. They did.

Q. Do you remember approximately what time it was when you left the plant on the morning of November 18th to go back to your home?

A. About 8:30.

Q. About 8:30.

And can you give us the approximate time, Mr. Hammond, as [2759] nearly as you can estimate it, that it took you before you had your family packed in the car and were on your way on the highway for Los Angeles?

A. We left just at 9:00 o'clock.

Q. At 9:00 o'clock.

I want to direct your attention to a conversation which you testified to on your cross examination which you had with Ruben Lloyd and Yankee Roberson on the evening of November 18th of last year after you had returned to the plant.

Do you remember that occasion? A. Yes.

Q. Do you remember testifying to that on your direct examination—on your cross examination.

A. I believe so.

Q. At any time during that conversation, Mr. Hammond, did either Mr. Lloyd or Mr. Roberson say that they had been present after the union men had returned to their jobs on that morning?

Mr. Mouritsen: Objected to as calling—leading and suggestive.

Mr. Clark: This is redirect examination, Mr. Examiner.

(Testimony of Gordon L. Hammond.)

Trial Examiner Lindsay: Well, I really believe that a witness should be allowed to testify.

Mr. Clark: What am I going to do, go back and exhaust the whole conversation again? [2760]

Trial Examiner Lindsay: Let him tell the conversation.

Mr. Clark: I have a right to direct his attention to various parts of it which were touched on the cross.

Trial Examiner Lindsay: Well, Mr. Clark, all I am saying is I believe a witness should be permitted to testify. Now as I pointed out the other day, there has been just too much of leading witnesses. Now after all the witness is the one who either does or does not know.

As to this particular question, he may answer. [2761]

Mr. Clark: May I have it read?

Trial Examiner Lindsay: But I do not want the witness led constantly any more.

Mr. Clark: I will reframe the question, Mr. Examiner.

Q. Will you please tell us, Mr. Hammond, whether or not during your conversation on the night or the evening of November 18th with Reuben Lloyd and Yankee Roberson, either of them made any statement to you with respect to whether or not they were present during the morning of that day after the Union men had returned back to their jobs and had commenced work again?

(Testimony of Gordon L. Hammond.)

Mr. Mouritsen: That may be answered yes or no.

Trial Examiner Lindsay: Yes. Answer it yes or no.

The Witness: No.

Mr. Clark: Very well.

Q. How far is the scale house from the office building at the plant, just roughly?

A. A little over 100 feet.

Q. I see.

During your cross examination, you told us that you had heard about some scrapes that Coon Powell had been in prior to the time you re-employed him—you employed him, rather—at the Boswell plant here in Corcoran.

Do you remember that testimony?

A. Yes, I remember. [2762]

Q. And I think you told us that you had heard that he had been tried for murder in the State of Georgia, is that right?

A. I heard that, yes.

Q. And that you had also heard of his conviction here in Kings County on the bad check charge?

A. Yes.

Q. Do you remember that? I want to ask you, Mr. Hammond, whether or not those two subjects, or that information about Mr. Coon Powell, was discussed generally among all the employees at the plant?

Mr. Mouritsen: Objected to as incompetent, irrelevant and immaterial.

(Testimony of Gordon L. Hammond.)

Mr. Clark: It is very material.

Mr. Mouritsen: It calls for a conclusion of this witness.

Trial Examiner Lindsay: Sustained in that form.

Q. (By Mr. Clark): Do you remember from whom you heard, for instance, that Mr. Coon Powell had been tried for murder in the State of Georgia?

Trial Examiner Lindsay: Well, may I off the record, just a minute—(pause)—

Mr. Clark: Yes.

(Discussion outside the record.)

Q. (By Mr. Clark): Mr. Hammond, will you please tell us, if you can, who it was from whom you heard that Mr. Coon Powell had been charged with murder in the State of Georgia? [2763]

A. I don't believe I could say who told me first. I have heard it two or three different times.

Q. Had you heard that prior to—withdraw that.

Had you heard that prior to, I will say, July 1st of 1938, from more than one person?

Mr. Mouritsen: That can be answered yes or no.

The Witness: I believe no.

Q. (By Mr. Clark): Had you heard it on more than one occasion? A. Yes.

Q. And can you tell us approximately on how many occasions you had heard that discussed?

Mr. Mouritsen: Objected to as already asked and answered.

Mr. Clark: I say how many occasions.

(Testimony of Gordon L. Hammond.)

Trial Examiner Lindsay: He may answer.

The Witness: Two that I can recall.

Q. (By Mr. Clark): Two that you can recall.

And will you please tell us whether or not persons who employed at the Boswell plant here in Corcoran were parties to those two discussions you have described to us?

Trial Examiner Lindsay: Tell us who told you, if you know. That is the question.

Mr. Clark: That is the way to get at it.

The Witness: Jack Owings for one. He told me.

Q. (By Mr. Clark): Is he employed at the plant here?

A. He is, and Mr. I. M. Henderson. [2764]

Q. Who is Mr. Henderson, please?

A. He is a coroner in Chatooga County, Georgia.

Q. The Coroner of what County in Georgia?

Trial Examiner Lindsay: What was the County.

The Witness: Chatooga; C-h-a-t-o-o-g-a.

Q. (By Mr. Clark): Do you remember any other occasions that you heard that matter discussed by anyone, namely, that Mr. Coon Powell had been charged with murder in Georgia?

A. I think I heard one here.

Q. Who was he? A. From my mother.

Q. From your mother? A. Yes.

Q. Did you hear it from any other employees at—around the plant? A. I don't believe so.

Q. Now, by the way, was Mr. Powell's nickname "Coon" Powell, was that all of his nickname?

(Testimony of Gordon L. Hammond.)

A. That is what they call him. That is all I know of.

Q. Have you ever heard him called by anything else? A. I don't believe so.

Q. Directing your attention to the conviction on the bad check charge here in Kings County in the spring of 1938, Mr. Hammond, did you hear that discussed by anyone at the time it occurred, or subsequently? [2765]

Trial Examiner Lindsay: Off the record.

(Discussion outside the record.)

Trial Examiner Lindsay: Read the question.

(The question referred to was read by the reporter, as set forth above.)

Trial Examiner Lindsay: Off the record.

(Discussion outside the record.)

Trial Examiner Lindsay: On the record.

Mr. Mouritsen: I object to the question upon the ground it is incompetent, irrelevant and immaterial; does not tend to prove or disprove any of the issues of this case.

Mr. Clark: Mr. Examiner, this matter was developed by Mr. Mouritsen on cross examination. Mr. Hammond was asked whether he knew of the murder charge, and whether he knew of the conviction here, and I presume that Mr. Mouritsen could only have had one theory, and that was to show that this man had certain knowledge concerning Coon Powell which in a way placed him then

(Testimony of Gordon L. Hammond.)

subject to the domination of Mr. Hammond, that bearing on the charge of the Board that Powell was a spy for the Company.

Now, I want to show, which I think is entirely material, that the fact that Coon Powell had been in some scrape in Georgia was common knowledge among the people here, and everybody in the County knew about the conviction on the bad check charge. That is all I am trying to develop. [2766]

Trial Examiner Lindsay: Again off the record.

(Discussion outside the record.)

Trial Examiner Lindsay: On the record. He may answer.

Mr. Clark: May I please have that question re-read?

Trial Examiner Lindsay: Yes. Read the question.

(The question referred to was read by the reporter, as set forth above.)

The Witness: At the time it occurred—I don't know if I got that part.

Trial Examiner Lindsay: Do you know what "occurred" means? Something happened.

All right. Does that explain it?

The Witness: I heard of it at the time, I guess. I wasn't there.

Q. (By Mr. Clark): Did you hear that Mr. Powell had been taken into custody, for instance?

A. Yes, I did.

(Testimony of Gordon L. Hammond.)

Q. And that he was in trouble? A. Yes.

Q. Now, did you hear that from more than one person, if you recall?

A. I couldn't recall any names. I would say yes.

Q. Yes.

Mr. Hammond, directing your attention to the morning of November 17th, 1938, will you please tell us whether you had [2767] notified Johnston, Griffin and Eller that they were to be laid off at the end of that day, before or after your conversation with Mr. Prior and Mr. Farr and Mr. Spear?

A. It was before.

Q. I see.

Do you recall whether or not you had any conversation with Mr. L. E. Ely on the evening of November 18th, 1938—

Mr. Mouritsen (Interrupting): Objected to as—

Mr. Clark (Continuing): —between 7:00 and 8:00 o'clock at the—on the Boswell property, that is, between the J. G. Boswell office and the oil mill?

Mr. Mouritsen: That is objected to as already asked and answered, and covered in cross examination.

Mr. Clark: This is redirect examination, and also, Mr. Examiner, there is one conversation, or one incident, in the record which we didn't cover on our direct examination.

(Testimony of Gordon L. Hammond.)

Trial Examiner Lindsay: Direct your question to that incident and proceed.

Mr. Clark: May I have that question read?

Trial Examiner Lindsay: Yes. Read the question.

(The question referred to was read by the reporter, as set forth above.)

The Witness: I don't remember of any.

Mr. Clark: All right.

And will you tell us whether or not you remember any con- [2768] versation at that time and place at which both Mr. Ely and Mr. Perry were present?

Mr. Mouritsen: I will object to this. It was all covered by Mr. Wingrove on his direct examination.

Mr. Clark: It was not. We can read. After all, we want to make sure of it.

May I have the question answered, Mr. Examiner, if the witness has it in mind?

Trial Examiner Lindsay: Read the question.

(The question referred to was read by the reporter, as set forth above.) [2769]

Trial Examiner Lindsay: Is this supposed to be a new conversation?

Mr. Clark: First, I asked about any conversation with Mr. L. E. Ely on the evening of November 18th, and now I am asking whether he had any conversation with L. E. Ely, and Parrish, on the evening of November 18th between 7:00 and 8:00 o'clock on the Boswell property.

(Testimony of Gordon L. Hammond.)

Trial Examiner Lindsay: He may answer.

The Witness: I don't recall any.

Mr. Clark: Very well. That is all.

There are a couple of things which were left this morning, Mr. Examiner, in correcting the transcript which Mr. Wingrove wants to take up with Mr. Hammond.

Trial Examiner Lindsay: May I see those letters that were sent out to those boys?

Mr. Clark: Yes, indeed.

(The documents were passed to the Trial Examiner.)

Trial Examiner Lindsay: There is just one or two questions I would like to ask.

Q. What do you mean, Mr. Hammond, when you said that these boys were—it was understood between Mr. Robinson and these boys that they were to be paid until this matter was settled?

A. Well, in a conversation with Mr. Prior and Mr. Farr, Mr. Spear, and Mr. Martin, on the morning of November 19, Mr. Spear was in the office talking to Mr. Robinson about [2770] those men going back to work. He told Mr. Prior that the men were to be carried on the payroll until the matter was settled.

Q. Well, is that all of the conversation?

A. That is all that I remember. There was quite a long conversation about other things. I don't remember.

(Testimony of Gordon L. Hammond.)

Q. What do you mean by "until this matter was settled."

Mr. Clark: Objected to on the ground it calls for the conclusion of this witness as to what Mr. Robinson meant by a statement.

Trial Examiner Lindsay: If you know—strike that.

Q. Did Mr. Robinson tell you what his idea was on settling this matter? A. No, he did not.

Q. You don't know anything about it?

A. No, I don't know enough about it to justify to try to tell it.

Trial Examiner Lindsay: That is all.

Mr. Wingrove: Mr. Examiner, may I proceed to ask the witness a couple of questions to clear the record?

Mr. Mouritsen: May I be permitted to re-cross examine the witness before?

Mr. Clark: This is part of our redirect, you see.

Mr. Mouritsen: Oh, pardon me.

Mr. Wingrove: Mr. Mouritsen, for your information I [2771] would like to direct your attention to page 2623 of yesterday's transcript, line 20.

Mr. Mouritsen: I have it, Mr. Wingrove.

Q. (By Mr. Wingrove): Mr. Hammond, I am going to direct your attention to the fact that during your examination by myself yesterday I called your attention to certain testimony of Mr. L. E. Ely, to the effect that on the evening of November 18, 1938, between the hours of 7 and 8 o'clock p. m.,

(Testimony of Gordon L. Hammond.)

he testified he had a conversation with you at the J. G. Boswell Company's plant, and at the request of the Examiner I read that testimony, that entire line of Mr. Ely's testimony, from the transcript; and afterwards I asked you this question, commencing at line 20, page 2623:

“Q. (By Mr. Wingrove): Now, Mr. Hammond, after having heard the testimony read, will you kindly state as to whether or not you had any conversation with L. E. Ely on the evening of November 18, 1838?”

Answer, as it now appears in the transcript: “A. I don't remember of any, not at the time he has set anyway, because he wasn't there at that time. If any, it was a little later. I don't say that I did not now, but I don't believe I did.”

Will you kindly state, Mr. Hammond—will you kindly re-answer the question so as to clarify the word “he” which appears in your answer? [2772]

Trial Examiner Lindsay: If it is to be clarified.

Mr. Wingrove: If the word “he” is improperly used in the transcript.

The Witness: The answer is correct as it is.

Mr. Wingrove: You believe it is correct as it is with the word “he.”

Mr. Mouritsen, I will now refer you to page 2626 of the transcript.

Mr. Mouritsen: I have it.

Q. (By Mr. Wingrove): I will direct your attention to page 2626 of the transcript, lines 5 and 6

(Testimony of Gordon L. Hammond.)

—and may it be stipulated that those two lines were questions which applied to Mr. Gilmore?

Mr. Mouritsen: Yes, so stipulated.

Q. (By Mr. Wingrove): I asked you the following question during your examination yesterday. I will have to go back to line 3.

I asked you the following question yesterday during your examination:

“Q. What time during the month of May, to the best of your recollection?

“A. Well, he was at work during the 2nd through the 17th of May, and I talked to him four times in the morning.”

I will ask you to state as to whether or not that answer was correct as it appears in the record? [2773]

A. I don't remember saying “four times.” It strikes me that I said more than one time, more times than one, something to that effect, but I can't recall talking to him but twice.

Mr. Wingrove: May the record show that that question was asked for the purpose of clarifying the record in that respect?

Trial Examiner Lindsay: Yes.

Is that all, Mr. Wingrove?

Mr. Wingrove: Yes, that is the only question I have.

Recross Examination

Q. (By Mr. Mouritsen): Mr. Hammond, I believe you stated that you talked with the Coroner of

(Testimony of Gordon L. Hammond.)

Chatooga County, Georgia, regarding the charge for murder or for manslaughter that was placed against Mr. Powell, is that correct? A. Yes, it is.

Q. And when did you talk with him about that matter?

A. Some time the first of May of this year.

Q. Of what year? A. 1939.

Q. Is that the county from which you come, Mr. Hammond?

A. No. I lived in that county but I came from Lafayette, Georgia, Walker County, adjoining counties.

Q. And had you known this Coroner prior to the time you came to California? [2774]

A. Yes.

Q. Was he a coroner of this Chatooga County before you came—when you knew him before you came to California? A. No, he was not.

Mr. Mouritsen: That is all.

Mr. Clark: Is that all, Mr. Mouritsen?

Mr. Mouritsen: That is all.

Mr. Clark: Mr. Hammond, will you please tell us whether or not this gentleman was here in Corcoran when you talked to him about this?

The Witness: He was.

Mr. Clark: Here in business, was he?

The Witness: He spent the night with me.

Mr. Clark: I see.

That is all. Nothing further from us, Mr. Examiner.

(Testimony of Gordon L. Hammond.)

Mr. Mouritsen: Nothing further from the Board.

Trial Examiner Lindsay: That is all.

(Witness excused.)

Mr. Clark: Mr. W. W. Boswell, please.

W. W. BOSWELL

recalled as a witness by and on behalf of J. G. Boswell Company, having been previously duly sworn, was examined and testified further as follows:

Trial Examiner Lindsay: You were on the witness stand [2775] the other day?

The Witness: Yes.

Direct Examination

Q. (By Mr. Clark): Mr. Boswell, I believe you told us that your connection with the J. G. Boswell Company is that you are in charge of cattle?

A. Yes.

Q. For the company? A. Yes.

Q. In your—in the course of your position with the J. G. Boswell Company do you have any supervision over employees engaged in the work at the plant here in Corcoran? A. No. [2776]

Q. Do you know, prior to the time this proceeding started, that is, the hearing started, which I think the record will show was May 18th of this

(Testimony of W. W. Boswell.)

year—did you know a gentleman by the name of Eugene Clark Ely, otherwise known as “Fat” Ely?

A. No.

Q. Did you know him by sight even?

A. I don’t remember seeing him. I might have, but I didn’t know who he was.

Q. Very well.

Now, I want to particularly direct your attention to the day of Sunday, January 29th of this year, 1939, and I will ask you, Mr. Boswell, whether on that day or at any time during that day you saw Eugene Clark Ely or any of the other employees of the Boswell Company, past or present, at Bakersfield in front of the Teamsters’ Hall?

A. I didn’t know they had a Teamsters’ Hall in Bakersfield.

Q. Please answer the question.

A. No, I didn’t see him.

Q. Do you know where the Teamsters’ Hall is in Bakersfield? A. Never heard of it.

Q. Have you ever seen it?

A. I never heard of it, so I couldn’t have seen it.

Q. And if I understand you correctly, you said you didn’t know who Mr. “Fat” Ely was at that time? [2777] A. No.

Q. Will you please tell us, then, Mr. Boswell, whether you on this occasion, namely, Sunday, January 29th, drove your automobile slowly along some street in Bakersfield in front of the Teamsters’ Hall, and at that time gave Mr. Eugene Clark Ely

(Testimony of W. W. Boswell.)

and whoever was standing with him the "once over?"

A. No, I didn't see Ely or anyone else that I remember.

Q. Very well.

Now, do you know a man by the name of Leland Douglas Caffell? A. Yes.

Q. And who is he, please?

A. He is a cowboy for me, a regular cowboy for me.

Q. Can you tell us approximately when you employed Mr. Caffell?

A. I imagine it was the first of last fall, the first of September or August. I don't know the exact date, but it was along last fall.

Q. Since Mr. Caffell has been employed, can you tell us whether he has done any work at the Boswell plant in the nature of ginning, or working in the oil mill, or anything of that sort?

A. No. He has been a cow puncher at the Reden ranch.

Q. Do you know a man by the name of Walden H. Bunker?

A. He is what I call a "pick-up" cow puncher. I pick him up when I need him, a few days at a time.

Q. Can you tell us approximately when the first time was that [2778] you employed Mr. Bunker in that capacity?

A. Well, I would say—I wouldn't say the date,

(Testimony of W. W. Boswell.)

because I don't keep up with the dates. If we need four or five men, some of the boys pick up four or five or two or one. When we move the cattle, we pay them off and let them go.

Q. As far as you know, has Mr. Bunker ever been employed in the plant in Corcoran as a ginner or in the oil mill, or in connection with the activities in the plant?

A. I doubt that he has ever been in Corcoran.

Q. You doubt that he has ever been in Corcoran?

A. Yes.

Q. Your answer to the question is what?

A. Well, he hasn't.

Mr. Clark: Mr. Examiner, rather than recall this witness, I would like to direct one or two questions in defense against the charge of the Corcoran Telephone Exchange, if I may, at this time.

Q. Now, Mr. Boswell, at page 2033 of the transcript in this proceeding, which is that for June 7th of this year, Mrs. Dunn, Mrs. Margaret A. Dunn, testified in substance and effect that she had told Mr. Glenn, the owner of the Corcoran Telephone Exchange, or rather the stock of the Exchange, that Mr. Galusha had told her that Mr. Riley had told him that you had told Mr. Riley this: That you would get her job if it was the last thing you did; that you were going to get detectives and [2779] a dictaphone in her home—that is, Mrs. Dunn's home—and have the girls watched to prove your point; that you said that you had no recollection—may I have the last stricken.

(Testimony of W. W. Boswell.)

I will ask you, Mr. Boswell, whether or not on any occasion whatsoever you made that statement, or anything similar to it to Mr. Riley, or anyone else? A. I did not.

Q. Have you ever told anyone that you would get Mrs. Dunn's job if it was the last thing you ever did? A. I did not.

Q. And have you ever made any statement to that effect? A. Did not.

Q. Have you ever stated to anyone that you intended to put detectives and a dictaphone in her home? A. No.

Q. Or have you ever made statements similar to that to anyone? A. No.

Q. Or that you were going to have the girls watched to prove your point? A. No.

Q. Or have you ever made a statement similar to that to anyone whomsoever? A. I did not.

Mr. Clark: You may cross examine. [2780]

Cross Examination

Q. (By Mr. Mouritsen): Do you have any cowboys on your payroll at the present time, Mr. Boswell? A. Eight or ten, probably.

Q. Would you give us those names, please?

A. No, I couldn't tell you. I could get the books and tell you.

Q. Do you know any of them?

A. Yes. I have John Carpenter.

Q. Carpenter?

A. Carpenter. Bert Arnold.

(Testimony of W. W. Boswell.)

Q. How do you spell that?

A. A-r-n-o-l-d; Arnold.

Caffell, Lee Caffell.

Q. You discussed Mr. Caffell with Mr. Clark, didn't you? A. Yes.

Q. And the others?

A. Bill—I think his name is Cunningham.

Q. Bill Cunningham?

A. Yes, I think that is his name.

A boy named Dutch Williams. That is all of the regular monthly men.

Mr. Mouritsen: I think that is all.

Mr. Clark: No further questions from us, Mr. Examiner.

(Witness excused.) [2781]

Mr. Clark: Mr. Boyett, please.

J. B. BOYETT

recalled to the stand by and on behalf of the Respondent, Associated Farmers of Kings County, Inc., having been previously duly sworn, was further examined and testified as follows:

Direct Examination

Q. (By Mr. Clark): You have been sworn, Mr. Boyett? A. Yes.

Mr. Clark: This testimony, Mr. Examiner, is addressed to the Associated Farmers' case.

(Testimony of J. B. Boyett.)

Q. Mr. Boyett, I will show you a check which has been admitted in evidence in this case as Board's Exhibit 31, being a check payable to the order of the Pacific Tent & Awning Company for \$50.00 by the Associated Farmers of Kings County, Inc., and which is signed by you, J. B. Boyett, president, and Harold E. Botts, secretary and treasurer; after having called that to your attention—and dated, Mr. Boyett, June 1st of this year—now, after having called that to your attention, I want you to tell us the occasion or the reason for the Associated Farmers of Kings County having made out and delivered that check to the Pacific Tent & Awning Company?

A. We were in the midst of our membership drive during the month of February, as I have testified, and the tent, after the meeting of January 30th, was still standing there. We were [2782] looking for a place to have a barbecue, I believe, as I remember it. It was hard to get a place to entertain the crowd we expected.

Mr. Mouritsen: I will object to all this as vague—as not responsive to the question. The question was what was the occasion for making out this check. The witness is going into a rambling discussion that doesn't respond to the question at all.

Mr. Clark: I will see if I can't cover it with specific questions.

Trial Examiner Lindsay: Well, the question is specific. Read the question.

(Testimony of J. B. Boyett.)

(The record referred to was read by the reporter, as set forth above.)

Trial Examiner Lindsay: I think the answer should be stricken. Please answer the question.

The Witness: I don't know how to answer it, Judge.

Mr. Clark: I will withdraw the question, Mr. Examiner.

Trial Examiner Lindsay: Just a moment. I would like to have it answered, an answer to the question. If there is anything about this question that you don't understand, what is it?

The Witness: There is no mystery about this check.

Trial Examiner Lindsay: I am not asking about that. I am asking you what part of that question you do not understand. [2783]

The Witness: I understand the question fully, absolutely, if I can answer it in my own way.

Trial Examiner Lindsay: Well, if that is the only way you can answer it, proceed to answer it.

The Witness: We were in the midst of our membership drive and we decided to have a barbecue and invite some of the members of the State organization to address our members, and others who might be interested. I knew the tent was still standing down there at the Salyer ranch. I knew that Mr. Riley, who told me after the tent came here he was responsible for having the tent put there—I asked him if he could get the Pacific Tent and Awn-

(Testimony of J. B. Boyett.)

ing Company to leave the tent there until after the Associated Farmers could have a meeting there.

Mr. Riley advised me he would call up the Pacific Tent & Awning Company and would let me know.

He came back in about an hour. He said he had called the Pacific Tent & Awning Company, and we could have the tent, but there was a charge of \$50.00 for drayage to and from Corcoran, and he thought it was only right that we should pay the \$50.00 in as much as it was billed direct to him. I told him we would be glad to pay the \$50.00. [2784]

Q. All right.

Now, when was this with respect to February 1st, 1939

A. It was during the second week in February.

Q. I see.

You may cross examine—just one more question.
(Laughter)

Trial Examiner Lindsay: Off the record.

(Discussion outside the record.)

Trial Examiner Lindsay: On the record.

Mr. Clark: May I proceed, Mr. Examiner.

Trial Examiner Lindsay: Yes.

Q. (By Mr. Clark): Now, Mr. Boyett, will you please tell us whether or not the Associated Farmers of Kings County, Inc., had anything whatsoever to do with having the tent put up at the Salyer ranch in the first instance, that is, on January 30th of this year?

(Testimony of J. B. Boyett.)

A. No, knew nothing about it whatever.

Mr. Clark: That is all.

Cross Examination

Mr. Mouritsen: May I have just a moment, Mr. Examiner?

Trial Examiner Lindsay: Yes.

(Conference between counsel.)

Q. (By Mr. Mouritsen): I believe that on January 30, 1939, Mr. Forrest Riley was a member of the Associated Farmers of Kings County, wasn't he? [2785]

A. I believe he was, yes.

Q. And your discussion concerning this tent, the cost of transportation and everything, was with Mr. Riley, is that correct? A. That is correct.

Q. Now, according to your testimony the tent was already in position at the time that you talked with Mr. Riley? When I say "in position," it was set up on the Salyer ranch?

A. That is right.

Q. And Mr. Riley told you that the cost of putting the tent up and taking it back up to Fresno was \$50, is that correct? A. That is correct.

Q. And the tent had already been used for this meeting on January 30, 1939, it had already been set up by that time? A. It had.

Q. But the Associated Farmers paid the entire cost in this check that is Board's Exhibit 31 for bringing the tent down and for taking it back to Fresno, didn't they?

(Testimony of J. B. Boyett.)

A. We paid \$50. That is the only bill I saw.

Q. Didn't Mr. Riley tell you that was the entire cost of bringing the tent down and taking it back?

A. That is the drayage on the tent both ways, as I understood it.

Q. And, as a matter of fact, the Associated Farmers of Kings County paid \$50 for it that covered the cost of bringing it [2786] down and taking it back to Fresno, didn't they?

A. We did.

Mr. Mouritsen: That is all.

Mr. Clark: No further questions.

Trial Examiner Lindsay: That is all.

(Witness excused.)

Trial Examiner Lindsay: Now, will you gentlemen come up here just a moment?

(Conference between counsel and Trial Examiner Lindsay at the bench.)

Trial Examiner Lindsay: The hearing is adjourned until 9:30.

(Thereupon, at 4:35 o'clock p. m., an adjournment was taken until 9:30 o'clock a. m., Friday, June 16, 1939.) [2787]

American Legion Hall
Corcoran, California

Friday, June 16, 1939.

9:30 o'clock a. m. [2788]

PROCEEDINGS

Trial Examiner Lindsay: Hearing called to order.

Mr. Clark: Respondents are ready, Mr. Examiner.

Mr. Mouritsen: Ready for the Board.

Mr. Clark: In reading over the transcript, or rather the report of the evidence in Volume XV of the transcript in the present proceeding, which has to do with the Corcoran Telephone Exchange, my attention was attracted to two things which I think should be corrected, Mr. Examiner.

One of them appears at page 1999 at line 19 in the testimony of Mr. Glenn.

The statement appears: "The Witness—" being Mr. Glenn— "Hanford is our central office of this district," which should read, Mr. Examiner, "is their central office of this district," it referring to the Pacific Telephone & Telegraph system, and the preceding testimony having to do with the manner in which the bills for toll calls, that is, out-of-city calls, are collected.

Trial Examiner Lindsay: Well, just read the preceding testimony.

Mr. Clark: It is this, commencing over at page 1998 at line 18—may this be off the record, as far as my reading of this testimony is concerned?

Trial Examiner Lindsay: Well——

Mr. Clark (Interrupting): Very well, let it go on. [2790]

“Q. How is this 30-70 per cent financial arrangement settled up?” referring to the financial arrangement testified to by Mr. Glenn between the Pacific Telephone & Telegraph Company and the Corcoran Telephone Exchange applicable to the outgoing toll calls.

“A. They bill us——

“Mr. Clark (Interrupting): May I have that question, Mr. Examiner?

“Trial Examiner Lindsay: Yes.

“(The record referred to was read by the reporter, as set forth above.)

“Mr. Clark: I have no comment to make.

“The Witness: They bill us each month for 70 per cent of the amount.

“Q. (By Mr. McTernan): Of the amount that you collect?

“A. Of the whole amount, yes, sir. You see, these bills, if I might just clear up one thing, we make out no bills. Those bills are made out in Sacramento by the Pacific people, and are collected in Hanford out of our office. The bills are sent from Hanford into Sacramento to their clearing house of the Pacific Telephone and Telegraph, and they in turn send these bills to us for collection.

Then they bill us for the amount—at the same time they bill us for the amount, their proportion or 70 per cent of the money that we collect on those bills. [2791]

“Mr. Clark: May I ask, Mr. Examiner, whether this applies to the out-of-state calls?

“The Witness: It applies to all the toll calls.

“Mr. Clark: I see.

“The Witness: Hanford is our central office of this district.

“Q. (By Mr. McTernan): Do you have any agreements, or any working agreements, Mr. Glenn, with the Western Union Company?

“A. No, sir.”

Now, the witness is referring to the Pacific Telephone & Telegraph office, which is at Hanford, and the statement at line 19 should read “Hanford is their central office of this district,” and I submit that that is what he said, because the Corcoran Telephone Exchange has no office outside of the city limits of Corcoran. If there is any doubt about it, I can clear it up from him on the stand.

Trial Examiner Lindsay: I definitely recall that he did say “their” and the reason I remember it so definitely is—“our,” rather—is that I was wondering at the time whether or not there was an office over at Hanford, or whether he meant that was their connecting link.

Mr. Clark: Very well. I will clear it up with him on the stand.

Trial Examiner Lindsay: I wish you would.
May I state off the record—(pause)— [2792]

(Discussion outside the record.)

Trial Examiner Lindsay: On the record.

As far as the statements of counsel are concerned, they will be disregarded. The correction is the only thing that is under consideration.

Mr. Clark: I would also like to direct the Examiner's attention to page 2107 of the same volume, which is a discussion between counsel and the Trial Examiner at the time I asked that Mrs. Margaret A. Dunn be recalled for further cross-examination, commencing at page 2107, line 4. There appears the following:

“Trial Examiner Lindsay: All right. Let's have Mrs. Dunn.

“Mr. Mouritsen: Now, this is—he is calling Mrs. Dunn as his own witness.

“Mr. Clark: No, I am not. I am asking permission—let's not quibble about a thing like that—I am asking permission to ask three more questions of this witness on cross examination. That is all.

“Trial Examiner Lindsay: I called her back at your request.

“Mr. Clark: I want the record to show she is my witness,” is the way it reads, and it should be, “I want the record to show she is not my witness.”

Trial Examiner Lindsay: That is right. [2793]

Mr. Clark: May that correction be made?

Trial Examiner Lindsay: Yes.

Mr. Clark: Is that stipulated to?

Mr. Mouritsen: So stipulated.

Mr. Clark: Very well.

Now I think that Mr. Wingrove and Mr. Painter have some corrections to call attention to in yesterday's transcript. [2794]

Mr. Wingrove: Mr. Examiner, I would like to call your attention to page 2688 of yesterday's transcript, line 9, in which my name again appears as "Winslow." I would like to have that corrected.

Trial Examiner Lindsay: It may be corrected.

Mr. Clark: That is the viciousness of repetition, Mr. Examiner.

Mr. Wingrove: I next desire to call your attention to page 2728, line 24—I will go back to line 23. I believe the question was by Mr. Clark.

"Q. And you had been prior to that time, in the same conversation, talking about the events of November 19, 1938, hadn't you?"

That conversations refers to a conversation which the witness, Gordon Hammond, had on the afternoon of November 19, I believe, with Mr. Spear, and obviously in 19 the witness was speaking about the events of November 18th, and I think the record should be corrected to specify November 18 instead of November 19 in line 24.

Mr. Mouritsen: So stipulated.

Mr. Wingrove: On page 2761, line 8, appears this statement:

"One who either does no"—spelled no—"or does not know."

It is a minor point, but "no" is improperly spelled [2795] there.

Trial Examiner Lindsay: It may be corrected.

Mr. Wingrove: Page 2769, line 2—I will go back and read line 1: "at that time and place at which both Mr. Ely and Mr. Perry were present?"

The word "Perry" should be "Parrish."

Mr. Mouritsen: So stipulated.

Mr. Wingrove: Those are the only notations I have at this time, Mr. Examiner.

Mr. Clark: Mr. Glenn, please.

C. H. GLENN

recalled as a witness by and on behalf of the Corcoran Telephone Exchange, having been previously duly sworn, was examined and testified as follows:

Mr. Clark: Mr. Glenn has been sworn, Mr. Examiner.

Trial Examiner Lindsay: Yes. Your first name, Mr. Glenn?

The Witness: C. H. Glenn.

Direct Examination

Q. (By Mr. Clark): Mr. Glenn, I believe you stated when you were last on the stand that you are the president and general manager of the respondent Corcoran Telephone Exchange, is that true?

A. Yes, sir. [2796]

Q. And that also you are the majority stockholder of that corporation?

A. Yes, sir.

(Testimony of C. H. Glenn.)

Q. Now, first let me ask you whether or not the Corcoran Telephone Exchange has an office in Hanford? A. No, they have not.

Q. Has the Corcoran Telephone Exchange any other office than that which is maintained in the City of Corcoran? A. No.

Q. I direct your attention to a statement at line 19 on page 1999 of the transcript in this proceeding, which is included in your testimony: "Hanford is our central office of this district."

I will ask you, Mr. Glenn, whether you remember making any such statement? A. I do.

Q. What is the statement you remember making in that connection?

A. I had in mind that the Hanford office is the central office of the Pacific people, and not ours.

Q. I see.

What is the correct statement in that regard, then?

A. That Hanford is their central office.

Q. I see.

And by "their," you refer to whom? [2797]

A. The Pacific Telephone & Telegraph Company.

Q. All right.

Now, I believe that you also testified when you were last on the stand, Mr. Glenn, concerning certain cables belonging to the Pacific Telephone & Telegraph Company, which are attached to the board at the office of the Corcoran Telephone Exchange here in Corcoran.

(Testimony of C. H. Glenn.)

Do you remember that testimony?

A. Yes, sir.

Q. Will you please describe for us as best you can how those cables are physically attached to the board in the office of the Corcoran Telephone Exchange?

A. They are attached by solder. The wires are soldered to the back.

Q. And how do they come into the building, please?

A. They come in through the rear of the building, and to the back of the switchboard.

Q. All right.

Now, are those cables any part of the wires or lines and cables which you have already described for us as belonging to the Corcoran Telephone Exchange?

A. No. They belong entirely to the Pacific Telephone & Telegraph Company.

Q. All right.

Are they then a part of separate cables or wires maintained by the Pacific Telephone & Telegraph Company? [2798]

A. Yes, they are.

Q. So far as the work is concerned in bringing those cables into the building occupied by the Corcoran Telephone Exchange and fixing them to the board there, would you please tell us whether or not the Corcoran Telephone Exchange took any part in that?

A. We did not.

(Testimony of C. H. Glenn.)

Q. All right.

At any time, Mr. Glenn, has the Corcoran Telephone Exchange done any maintenance work with respect to those cables? A. No, sir.

Q. Has the Corcoran Telephone Exchange at any time done any repair work on those cables?

A. No, sir.

Q. Do you know whether or not the Pacific Telephone & Telegraph Company maintains any cables or wires in the County of Kings? A. Yes.

Q. Will you please tell us whether or not the Corcoran Telephone Exchange has ever done any maintenance or repair work on such cables or wires maintained by the Pacific Telephone & Telegraph Company? A. No, sir, we never have.

Q. Can you tell us whether or not, to your knowledge, there are any telephones connecting with any out-of-state systems [2799] or by which one could put in a toll call to a point beyond the State of California maintained by the Pacific Telephone & Telegraph Company in Kings County?

Mr. Mouritsen: May I have that read?

(The question referred to was read by the reporter, as set forth above.)

Mr. Mouritsen: I will object to it on the ground that it is ambiguous, confusing and indefinite.

Mr. Clark: I will submit it.

Trial Examiner Lindsay: Well, I think there should be some foundation laid for that.

Mr. Clark: I simply want to know, Mr. Examiner—

(Testimony of C. H. Glenn.)

Trial Examiner Lindsay (Interrupting): I know what you wish to know, Mr. Clark. [2800]

Mr. Clark: It is a preliminary question. It is part of the foundation I am laying for a further question.

I will reframe it.

Q. Do you know whether or not the Pacific Telephone & Telegraph Company maintains any telephones itself here in Kings County?

A. Yes, sir.

And will you please tell us how near to the City of Corcoran—withdraw that.

Will you please tell us how near to the City of Corcoran any of those telephones are?

A. I should say that the nearest one is about six miles.

Q. All right.

And where is that located, if you know?

A. At Angiola.

Q. And is that six miles by highway?

A. Approximately, yes, sir.

Q. Will you please state whether or not by use of that telephone, a person would be able to put in and complete an out-of-state call?

Mr. Mouritsen: I will object to that on the ground that that——

Mr. Clark (Interrupting): Withdraw that.

Q. Does that telephone connect with the Pacific Telephone & Telegraph System, if you know? [2801]

A. Yes, sir.

Q. And is it maintained by the Pacific Telephone & Telegraph Company? A. Yes, sir.

(Testimony of C. H. Glenn.)

Q. Do you know whether or not calls out of the State of California can be put through by the use of that phone? A. Yes, sir. [2802]

Q. Now, do you know of any other similar telephones maintained by the Pacific Telephone and Telegraph Company in the vicinity of the town of Corcoran?

Mr. Mouritsen: Objected to as incompetent, irrelevant and immaterial, calling for something beyond the knowledge of this witness.

Mr. Clark: I say, does he know.

Trial Examiner Lindsay: Sustained.

Just a minute. Off the record.

(Here followed discussion outside the record.)

Mr. Clark: The objection is sustained, is that right?

Trial Examiner Lindsay: Yes.

Mr. Clark: Very well.

Q. Now, Mr. Glenn, do you know a Mrs. Margaret Dunn? A. Yes, sir.

Q. And for how long have you known Mrs. Dunn? A. About 15 years.

Q. Prior to March 1st of this year was she employed by you at the Corcoran Telephone Exchange?

A. She was; yes, sir.

Q. And in what capacity, please?

A. As telephone operator.

Q. Directing your attention to the period from two to three years prior to March 1, 1939, I will ask

(Testimony of C. H. Glenn.)

you whether or not any change occurred with respect to the performance by Mrs. Dunn of her duties at the exchange? [2803] A. Yes, sir.

Q. Please answer yes or no. A. Yes, sir.

Q. Will you please state what that was?

A. About two and a half years previous to March 1st Mrs. Dunn informed me one evening that she——

Mr. Mouritsen (Interrupting): If this calls for a conversation, let us have the foundation laid.

Mr. Clark: Very well. Let me have the question back, please, Mr. Examiner.

Trial Examiner Lindsay: Yes.

(The record referred to was read by the reporter, as set forth above.)

Q. (By Mr. Clark) Will you please tell us what the change was, without giving us any conversation between you and Mrs. Dunn at that time.

A. Well, I just don't get that.

Q. We will call for the conversation later.

Trial Examiner Lindsay: Read the question.

Mr. Clark: The question is: "What was the change?"

Trial Examiner Lindsay: I am asking him for the question.

(The record referred to was read by the reporter, as set forth above.)

The Witness: A change in her physical condition. [2804]

(Testimony of C. H. Glenn.)

Mr. Clark: Very well.

Mr. Mouritsen: I move to strike on the ground it is not responsive.

Mr. Clark: I will submit it.

Trial Examiner Lindsay: Well, it may stand.

Q. (By Mr. Clark) Now, at that time, Mr. Glenn, that is, approximately two and a half years prior to March 1st of this year, did you have any talk with Mrs. Dunn with respect to her physical condition? A. Prior to this time?

Q. About two and a half years prior to March 1st of this year.

A. Yes, sir.

Q. Do you remember where that was?

A. It was at the office of the Telephone Exchange.

Q. And do you remember whether or not anyone else was present?

A. No, there was not.

Q. Will you please state what Mrs. Dunn said to you in that regard and what you said to her?

A. Mrs. Dunn told me that she had stood a physical examination during the day and that the doctor had informed her that she either had a tumor or a cancer and that he suggested an immediate operation. [2805]

Q. I see.

Did she state to you—withdraw that.

Did she have such an operation, so far as you know?

A. I asked her—no, she told me a few days after

(Testimony of C. H. Glenn.)

that that she would not.

Q. Did she continue working at the Exchange?

A. Yes, sir.

Q. Immediately following your conversation with Mrs. Dunn on that occasion, did you notice any change in her ability to do the work?

A. Not immediately.

Q. I see.

And did you ultimately notice any change in the manner in which Mrs. Dunn was performing her duties at the Exchange?

A. Yes, sir.

Q. All right.

Can you tell us approximately how long it was after the conversation you placed for us, being about two and a half years prior to March 1st, 1939, that this change manifested itself?

A. Well, I think about a year.

Mr. Mouritsen: This is objected to upon the ground it is too remote to have any bearing on any of the issues in this case.

Mr. Clark: It does, after all—— [2806]

Trial Examiner Lindsay (Interrupting): The answer may stand.

Mr. Clark: Very well.

Q. You think about a year after that conversation, is that correct?

A. I would say about that long.

Q. All right.

Mr. Mouritsen: May I have it understood I have a continued objection to this line of testimony upon

(Testimony of C. H. Glenn.)

the ground it is incompetent, irrelevant and immaterial, and too remote to have any bearing upon the issues in this case?

Mr. Clark: I will stipulate that the objection may run to the entire line of testimony.

Q. Mr. Glenn, will you describe this change for us?

A. The change was noticeable to me from the fact that she would brace herself with a pillow when she was sitting at the board and from her nervousness, and from the fact that she started to drink liquor.

Q. Now, so far as the brace, so far as the bracing of herself with a pillow is concerned, let me ask you whether you noticed from time to time, or whether or not you noticed from time to time, any manifestation of pain on the part of Mrs. Dunn while she was on duty?

A. I know there were times when she would go to work that she would have to put on a relief operator and go home. [2807]

Q. I see.

Now, when did those manifestations—withdraw that.

At about this time, Mr. Glenn, can you tell us whether or not there were any complaints made by any of your customers concerning the service rendered them by Mrs. Dunn?

Mr. Mouritsen: May I have the time fixed?

Trial Examiner Lindsay: You mean about a year ago?

(Testimony of C. H. Glenn.)

Mr. Clark: I mean a year and a half prior to March 1st.

Trial Examiner Lindsay: A year and a half prior to March 1st.

The Witness: Yes, we had complaints.

Mr. Clark: Very well.

Q. Now, can you tell us whether or not—withdraw that.

Had there been complaints about Mrs. Dunn prior to this period of a year and a half before March 1st, 1939?

A. Well, I don't think an unusual amount.

Q. All right.

Now, during the period of a year and a half immediately before March 1st, 1939, will you tell us whether or not complaints increased in frequency?

A. Yes, they did.

Q. All right.

Now, do you remember any persons who made those complaints about her during the period of time to which I have directed your attention? [2808]

A. Yes, sir.

Q. Will you please state the names of some of them? A. Kenneth Betell.

Q. And who is Mr. Betell?

A. He is a pump man, a farmer.

Q. And who else, please?

A. Blake Crary.

Q. And who is Mr. Crary?

A. Cashier of the First National Bank.

(Testimony of C. H. Glenn.)

Q. Of Corcoran? A. Of Corcoran.

Q. And anyone else?

A. Ed Arnold — that was later — pardon me (pause).

Mr. Mouritsen: Let the record show the pause that the witness is making at this time.

Mr. Clark: I am sure it will, Mr. Mouritsen.

The Witness: John Kanst.

Q. (By Mr. Clark) Who is he, please?

A. He is a dairyman, farmer. (Pause.)

Mr. Mouritsen: The record will show a prolonged pause at this time, too, I am sure.

The Witness: Marion Phillips.

Q. (By Mr. Clark) Who is Mr. Phillips?

A. A San Joaquin Light & Power Corporation employee; Bill Mink. [2809]

Q. And who is Mr. Mink?

A. He is a truckman.

Q. I see.

Any others you can think of?

A. (Pause). Boswell Gin.

Q. That is the Respondent, J. G. Boswell Company? A. Yes.

Q. All right.

Any others?

Mr. Mouritsen: May I have that clarified? Obviously, the gin can't complain about it.

Mr. Clark: I asked him if that was the Respondent, J. G. Boswell Company, and he answered "Yes."

(Testimony of C. H. Glenn.)

Trial Examiner Lindsay: But who in the Company?

The Witness: Albert Armour.

Q. (By Mr. Clark) Anyone else?

A. (Pause.)

Mr. Mouritsen: The record will indicate the pause.

The Witness: I don't remember just now.

Mr. Clark: All right.

Q. Did a Mr. T. K. Brown complain to you?

A. Yes, sir.

Mr. Mouritsen: Objected to as leading and suggestive.

Mr. Clark: He says he doesn't think of anyone else, and I have a right now to ask him specifically whether different [2810] people complained. I asked him whether or not Mr. Brown complained.

Q. The answer is what? A. Yes, sir.

Q. All right.

Now, were these complaints—withdraw that.

Were these all the complaints that you received during this year and a half period of time, Mr. Glenn, or were there others?

A. There were others. The complaints were coming in right along.

Q. I see.

And would you say that the complaints concerning Mrs. Dunn's service, or the service rendered by her, while working at the Corcoran Telephone Exchange, were more numerous during the year and a

(Testimony of C. H. Glenn.)

half period than they had been prior to that time?

Mr. Mouritsen: Objected to as calling for a conclusion of the witness.

Q. (By Mr. Clark) If you know?

Trial Examiner Lindsay: Now, just a moment. I believe there is an objection there that I have not ruled on that was cut off on my ruling. Mr. Mouritsen objected. When an objection is made, will you gentlemen just stop and let me rule on it.

Mr. Clark: I didn't hear it, Mr. Examiner.

Trial Examiner Lindsay: Well, it will show that you did [2811] hear. Go back and read that.

(The record referred to was read by the reporter, as set forth above.)

Trial Examiner Lindsay: Now, go back and strike everything out of the record except the objection.

Mr. Clark: You mean physically strike it?

Trial Examiner Lindsay: And Mr. Clark's statement, then I will rule on it, and you may reask it.

Mr. Clark: Mr. Examiner, in the first place I am going to object to your striking out anything in the record concerning that question which appears in it at this time, and if there are any comments concerning that colloquy to be made by the Trial Examiner, I am going to insist, so far as I am able to do so, that they be on the record. [2812]

Trial Examiner Lindsay: Listen, Mr. Clark. It may be on the record. Anything that I have said

(Testimony of C. H. Glenn.)

off the record was merely for the purpose of keeping out of the record things that are not necessary to have in the record and I am satisfied, Mr. Clark, that in no court would you or any other attorney try to proceed to make a witness answer a question when there is an objection without a ruling on it. I am sure that you don't take the attitude that you have a right, when an objection is made, to direct the witness to answer a question and disregard the court completely on the matter.

Mr. Clark: Certainly not.

Trial Examiner Lindsay: If that is your attitude, then you surely don't have any place in a hearing.

Mr. Clark: Well, I think that remark is entirely uncalled for from you, Mr. Examiner.

Trial Examiner Lindsay: No, it is not uncalled for. I don't want a bit of argument, not a bit. Stop right now.

Mr. Clark: Well, I am not going to be told by you, Mr. Lindsay——

Trial Examiner Lindsay (Interrupting): You are going to do as I tell you.

Mr. Clark (Continuing): ——that I have no place in a court room.

Trial Examiner Lindsay (Continuing): Or you are not going [2813] to be in here.

Mr. Clark: That is quite all right with me too.

Trial Examiner Lindsay: All right.

Mr. Clark: Now——

(Testimony of C. H. Glenn.)

Trial Examiner Lindsay (Interrupting): Just a minute——

Mr. Clark (Continuing): First, I want to apologize, Mr. Lindsay, for losing my temper and I want to state so far as the record is concerned that I did not deliberately attempt to get Mr. Glenn to answer that question before any ruling by your Honor. I didn't think that Mr. Mouritsen's objection had been seriously considered and I simply made the statement I did and after that Mr. Glenn answered.

I certainly didn't mean to prevent you from making a ruling on any objection.

Trial Examiner Lindsay: I will accept your apology, Mr. Clark; but repeatedly all during this hearing I have constantly stricken from the record, at your request, even my own rulings and everything that preceded or everything that followed until I did rule on it and then we went back and did the same thing. I was merely asking that we do that particular thing in this matter.

Your remarks were a little uncalled for. They were without justification or without reason. Now just remember one thing, that every attorney who comes in here to practice is an officer of this court while we are in here just the same [2814] as you are an officer of any other court and when a direction is given, that doesn't in any way affect anyone's testimony, merely to keep on and to keep the record in order, then an attorney is entirely out of order when he objects to it. All during this hearing, every

(Testimony of C. H. Glenn.)

time I have attempted to make a ruling, I have been cut off constantly and the right does not lie with any individual in any hearing, as an attorney, to make sarcastic remarks to anyone in charge of a hearing and neither does it give him the privilege or anyone else the privilege to constantly cut off remarks that are attempted to be made or rulings that are attempted to be made. You have a duty to perform and that is to come in and conduct yourself as a gentleman in a hearing, whether it is in this court or any other court, and to elicit facts from a witness and to preserve your record, and when you have done that, your duty to your client and to everyone else has been completed, but in performing that duty you must conduct yourself properly before this court or before any other court and that is all I am asking.

Now proceed in an orderly way. I don't want any more of this.

Now before I make a ruling I have a right, a perfect right, to stop a second and think about it and then when others start in talking and cut me off we have no ruling. Now the situation is this, that I either have to rule in favor [2815] of the respondent or I must go back and strike out that testimony. Now that is the position I am in through it.

Now, may I have the question and the testimony again?

(The record referred to was read by the reporter, as set forth above.)

(Testimony of C. H. Glenn.)

Trial Examiner Lindsay: Well, it may stand.

Q. (By Mr. Clark) Now, Mr. Glenn, will you please tell us whether or not these complaints continued right up to the first of the year 1939?

Mr. Mouritsen: Objected to as vague and indefinite. We have never had any explanation of what these complaints are.

Mr. Clark: He has been testifying to the complaints.

Trial Examiner Lindsay: Sustained.

Mr. Clark: Very well. All right.

Q. You spoke of Mrs. Dunn having started to drink during the year and a half immediately preceding March 1st, 1939.

Will you please tell us when you first noticed that?

Mr. Mouritsen: I will object to this unless it is connected with the work in some way.

Mr. Clark: I will withdraw it.

Q. At any time during the year and a half period immediately preceding March 1, 1939, did you notice that Mrs. Dunn had been drinking on the job? A. Yes, sir. [2816]

Q. All right.

And when did you first notice that, please?

A. It was a year or more before March 1st.

Q. All right.

Mr. Mouritsen: May we have that year before March 1st?

Trial Examiner Lindsay: A year or more.

(Testimony of C. H. Glenn.)

Q. (By Mr. Clark) Before March 1st of what year? A. 1939.

Q. And in what way did you notice that, Mr. Glenn? A. I smelled it on her.

Q. And will you please give us some indication of the number of times you smelled liquor on her breath?

A. Well, it was periodically throughout the year until March 1st.

Q. What do you mean by "periodically"?

A. It wasn't all of the time I smelled it on her, but I smelled it on her a great deal.

Q. All right.

A. During that time.

During that period of time, namely, a year or more prior to March 1st, 1939, did you notice a bottle of liquor in the ice box at the exchange?

A. Yes, a number of times.

Q. Did you ever have any conversations with Mrs. Dunn about that? [2817] A. Yes, sir.

Q. And when, please? Just give us one of them, if there were more than one.

A. I think that perhaps about three or four months after I began smelling it on her.

Q. I see.

And there was that conversation, if you remember it?

A. At the office, the telephone office.

Q. What did you say to her and what did she say to you with respect to the question of her having been drinking?

(Testimony of C. H. Glenn.)

Mr. Mouritsen: May we have the foundation completed before the conversation is given?

Mr. Clark: I will submit it.

Trial Examiner Lindsay: Yes.

Q. (By Mr. Clark) Was anyone else present?

A. No.

Q. Will you tell us what you said to her and what she said to you with respect to drinking?

A. She brought up the subject herself.

Q. What did she say?

A. She told me that the doctor had advised her to drink port wine to strengthen her.

Q. What did you say to that?

A. I don't know that I answered it at all.

Q. Very well. [2818]

Now, during the period of a year and a half prior to March 1st, 1939, were any complaints made to you and by any of the other operators concerning Mrs. Dunn's conduct while on duty at the office?

Mr. Mouritsen: I object to that as calling for a conclusion of the witness; vague and indefinite as to what the complaints are.

Mr. Clark: I withdraw that.

Q. During the year and a half period immediately preceding March 1st, 1939, did you employ any other operators other than Mrs. Dunn?

A. Yes, sir.

Q. Were any of those people on duty at the same time as Mrs. Dunn during that period of time?

A. There were.

(Testimony of C. H. Glenn.)

Q. Can you state the names of any of them?

A. Lillian Fowler.

Q. Anyone else? A. Mrs. Bunch.

Q. Anyone else? A. Jack Dunn.

Q. Anyone else? These are operators I am calling for.

A. Yes. We have five. Let's see. There was Lillian Fowler and Mrs. Bunch and Jack Dunn, Mrs. Woodruf, and Mr. Woodruf. [2819]

Q. I see.

Now, during the period of approximately a year and a half immediately preceding March 1st, 1939, did any of those persons complain to you with respect to the manner in which Mrs. Dunn had been conducting herself while on duty at the exchange?

Mr. Mouritsen: Objected to as calling for a conclusion of the witness.

Mr. Clark: I will submit it.

Trial Examiner Lindsay: May I have the question?

Mr. Clark: I am not going to go into all of these conversations, Mr. Examiner. I simply want the fact as to whether or not there was a complaint made.

Trial Examiner Lindsay: May I have that question read?

(The question referred to was read by the reporter, as set forth above.)

Trial Examiner Lindsay: I think you should have the specific complaints noted. [2820]

(Testimony of C. H. Glenn.)

Mr. Clark: I withdraw the question.

Q. During a year and a half immediately preceding March 1st, 1939, did you notice any dissension in the employees of the office?

A. Yes, sir.

Mr. Mouritsen: I move it be stricken on the ground it calls for a conclusion of the witness.

Mr. Clark: I submit it.

Trial Examiner Lindsay: It may be stricken.

Mr. Clark: I will take the ruling on it. I am not going into it. Mr. Mouritsen can go into that if he wants on cross examination.

Q. Mr. Glenn, did you have any conversations with Mrs. Dunn respecting the manner in which she was discharging her duties at the Corcoran Telephone Exchange prior to the 1st of the year, 1939? A. Yes.

Q. Can you tell us when the last—withdraw that.

Did you have more than one such conversation with her during the year and a half immediately preceding the first of March of this year?

A. Yes, sir.

Q. All right.

Now, you tell us when the last one was prior to the first of the year 1939? [2821]

A. That was in, I would say, November.

Q. Of what year, please? A. '38.

Q. All right.

(Testimony of C. H. Glenn.)

Now, do you remeber where that conversation took place?

A. It took place at the office, the telephone office.

Q. Here in Corcoran? A. Yes, sir.

Trial Examiner Lindsay: Just a minute.

Mr. Clark: Yes.

Trial Examiner Lindsay: Mr. Reporter, will you change my ruling above from "It may be stricken," to "It may stay in."

Mr. Clark: May I have what is going back in the record, Mr. Examiner?

Trial Examiner Lindsay: I changed my ruling from "It is stricken," to "It may stand."

Mr. Clark: With respect to my questions concerning her?

Trial Examiner Lindsay: That one question, Mr. Clark.

Mr. Clark: What question?

Trial Examiner Lindsay: About dissension.

Mr. Clark: May I have the last question?

(The question referred to was read by the reporter, as set forth above.)

Q. (By Mr. Clark): Was anyone else present other than you [2822] and Mrs. Dunn, Mr. Glenn?

A. No, I don't think so.

Q. Will you please tell us what you said to her, and what she said to you on that occasion in respect to the manner in which she was performing her duties at the Exchange?

(Testimony of C. H. Glenn.)

A. I asked Mrs. Dunn why she didn't pay more attention to her health, because it was very apparent her health was being impaired, and was going down.

She told me that she was—the reason—she told me that she just had to work, that she had to have the money, that her oldest son had bought a car, had gone into Los Angeles and had run into a woman on the street, had knocked her down and broken her hip, and that they had compelled the boy to put up a note for a thousand dollars; the boy was unable to make the payments on his car and make the payments on the note, and that he had appealed to his mother for assistance, and that she had gone into Los Angeles and endorsed the note for the son, which she expected she was going to have to pay; and she, therefore, had to work.

Mr. Mouritsen: Very well. I will move to strike all of the testimony on the ground it is not responsive, does not have any bearing on the issues of the case. It isn't directed to the question which was as to the manner of her discharging her duties, and has no bearing.

I move that it go out. [2823]

Mr. Clark: I will submit it.

Trial Examiner Lindsay: It may go out.

Mr. Clark: Very well. I will reframe the question.

Q. Will you please tell us, Mr. Glenn, what Mrs. Dunn said to you—or what you said to Mrs. Dunn

(Testimony of C. H. Glenn.)

and what she said to you on the occasion which you have just identified?

Mr. Mouritsen: I will object to the question on the ground it is incompetent, irrelevant and immaterial.

Mr. Clark: There is no way of telling that, Mr. Examiner, until the conversation comes in.

Trial Examiner Lindsay: He may answer.

The Witness: Will you read the question?

(The question referred to was read by the reporter, as set forth above.)

Q. (By Mr. Clark): That is in November of 1938, at the office here in Corcoran.

A. Well, I asked Mrs. Dunn why she wasn't paying more attention to her health, and why she didn't lay off and take a rest for awhile, and she told me that her reason was that she simply had to have money, giving as a cause for having to have money that her oldest son had purchased a car, a new car, had gone into Los Angeles, had run into an elderly lady, had knocked her down on the street and broken her hip, and that she had compelled him to sign a note for a thousand dollars and that when the payments came due on his car and the note, he was [2824] unable to meet those two payments, and he had appealed to his mother, and that she had gone into Los Angeles and endorsed that note and that—expected to have to pay the rest of that note.

Q. All right.

(Testimony of C. H. Glenn.)

During that conversation, did you call Mrs. Dunn's attention to the fact that there had been complaints about her work?

Mr. Mouritsen: Objected to as leading and suggestive.

Mr. Clark: Withdraw that.

Q. During that conversation, Mr. Glenn, will you please state whether or not anything was said by you to Mrs. Dunn concerning complaints having been made about her work?

Mr. Mouritsen: Of course, after having asked a leading question and asking the question he wants, counsel has failed to get any worth that would be gotten by a proper question.

Mr. Clark: Is that an objection, Mr. Examiner, or is there a ruling to come from it? [2825]

Trial Examiner Lindsay: When I get ready to rule, Mr. Clark, I will. I understand it was an objection.

Will you read Mr. Mouritsen's statement, Mr. Reporter?

(The record referred to was read by the reporter, as set forth above.)

Trial Examiner Lindsay: Do you mean that as an objection, Mr. Mouritsen?

Mr. Mouritsen: I merely wanted to indicate, Mr. Examiner, that counsel has merely indicated to the witness how the question is to be answered and then withdraws the question and later tries to elicit the same information by the proper ques-

(Testimony of C. H. Glenn.)

tion, but he has effectively destroyed any value or weight that such testimony has.

Mr. Clark: The record will speak for itself.

May I have the question answered, Mr. Examiner?

Trial Examiner Lindsay: And may I again state that I would really like to have the testimony of the witness, and let us not lead these witnesses this way.

You may answer.

Mr. Clark: May I have the question read back?

Trial Examiner Lindsay: Yes. Read the question.

(The question referred to was read by the reporter, as set forth above.)

Q. (By Mr. Clark): By customers.

A. Yes. [2826]

Q. Will you tell us what that was, please?

A. (Pause.)

Mr. Mouritsen: The record will indicate the pause of the witness?

The Witness: Well, I don't just recall the complaints of that day.

Q. (By Mr. Clark): I don't care about any specific complaints, Mr. Glenn. If you will give us the substance of what you said to Mrs. Dunn, that is all I want. What you said to her.

Mr. Mouritsen: Well——

The Witness (Interrupting): I said to Mrs.

(Testimony of C. H. Glenn.)

Dunn—I told Mrs. Dunn that there had been complaints from the girls——

Mr. Mouritsen (Interrupting): I move to strike this as not responsive. The question was, complaints by customers.

Mr. Clark: That is right. That may go out, Mr. Examiner, pursuant to a stipulation from us.

Q. We are only concerned with what you said to Mrs. Dunn, Mr. Glenn, on this occasion, if anything, concerning any complaints having been made by customers up to this time.

A. What was the date of this? That is confusing me.

Q. I am directing your attention to the conversation which you told us about as having occurred in November 1938 between you and Mrs. Dunn.

A. No, I didn't ask her of any complaints in November—[2827] I didn't make any complaints in November I don't think.

Q. I see. All right.

During that conversation in November of 1938 between you and Mrs. Dunn did you say anything to her concerning any dissension in the office?

A. Yes, I did.

Q. What, if anything, did you say on that subject?

A. I told her that the girls were complaining very bitterly about her drinking, because it was embarrassing to them. I told her that Mrs. Wood-

(Testimony of C. H. Glenn.)

ruff had told me that she thought she had better quit herself because she couldn't stand the dissension that was going on in the office.

Q. And is Mrs. Woodruff one of the operators there? A. Yes, sir.

Q. Is Mrs. Woodruff's husband employed by you also? A. Yes, sir.

Q. In what capacity, please?

A. As a repairman, lineman.

Q. What, if any, response did Mrs. Dunn make to that, Mr. Glenn, during this conversation?

A. She said that—I don't get it.

Q. Did she say anything at all to you in answer to the statement you have just given us?

A. I think that she told me on that meeting that she was—no. That was not the meeting—that was not the time that [2828] the doctor——

Trial Examiner Lindsay (Interrupting): I think if you will just let this witness answer the question.

The Witness: I don't remember, Mr. Clark.

Mr. Clark: All right.

Q. Can you give us anything else, Mr. Glenn, that was said between you and Mrs. Dunn during this conversation which you have told us took place in November of last year at the office here in Corcoran, or have you exhausted it?

A. (Pause.) Will you please ask that question again?

Mr. Clark: May I have the question read?

(Testimony of C. H. Glenn.)

Trial Examiner Lindsay: Yes. Read the question.

(The question referred to was read by the reporter, as set forth above.)

The Witness: I cannot. I don't remember what that conversation was.

Mr. Clark: All right.

Q. Now, did you have—withdraw that.

Can you tell us what prompted you to have this conversation with Mrs. Dunn at this time?

A. Because of her condition and the complaints that were coming in from the outside.

Q. I see.

Did you have a further conversation with Mrs. Dunn during the month of January of this year respecting the performance [2829] by her of her duties at the Exchange? A. Yes, sir.

Q. Can you place the time for us as nearly as you can, or will you place the time for us as nearly as you can?

A. About the first of January, I think.

Q. About the first of January? A. Yes.

Q. And where did that conversation take place?

A. That conversation took place at the office.

[2830]

Q. And by "the office," you mean the office of the Exchange here in Corcoran? A. Yes, sir.

Q. Who, if anyone, else was present?

A. There wasn't anybody present—just Mrs. Dunn and I.

(Testimony of C. H. Glenn.)

Q. All right.

What prompted this conversation, please?

A. This conversation took place the latter part of January.

Q. Well, can you fix the date for us as nearly as possible?

A. Yes. It was the week of the 22nd, I would say. It was the last part of January.

Q. How do you fix the date?

A. I fix the date from the fact that my birthday is on the 31st of January and I know it was before that date.

Q. All right.

Now, I believe you said this conversation took place at the office of the Telephone Exchange?

A. Yes, sir.

Q. And that no one else was present besides you and Mrs. Dunn?

A. That is correct.

Mr. Mouritsen: Is this a conversation that was fixed around the first of January?

Mr. Clark: Apparently he changed the date. He said it [2831] was around the 1st of January, and then he said he wanted to make a correction, and now he thinks it was the latter part of January.

Mr. Mouritsen: Thank you.

Q. (By Mr. Clark) Which is it, Mr. Glenn, around the 1st or last part of January?

A. Last part of January.

Trial Examiner Lindsay: What year?

(Testimony of C. H. Glenn.)

The Witness: 1938.

Mr. Clark: Very well.

The Witness: January, 1939. Pardon me.

Trial Examiner Lindsay: '39?

The Witness: Yes, sir.

Q. (By Mr. Clark) Now, will you please tell us what you said to Mrs. Dunn on that occasion concerning the performance by her of her duties at the Exchange, and what she said to you, if anything?

A. I told Mrs. Dunn—I called Mrs. Dunn into the back office. I told her that Albert Armour of the Boswell Company had brought charges that she was running around nights with Fred Galusha, and that they objected very strenuously because Fred Galusha was superintendent of the Anderson-Clayton Ginning Company, and since she was handling their intimate business calls over the phone, they objected to the competitor to her running around with a competitor very much. [2832]

Mr. Mouritsen: Mr. Examiner, I move to strike that as not responsive and as having no bearing on the case. I suppose counsel knew of this conversation before he requested the witness to testify.

Mr. Clark: Of course I did. I am attempting to solicit it as best I can, and I will take whatever ruling the Examiner chooses to make on it.

Trial Examiner Lindsay: May I have the question, please?

(The question referred to was read by the reporter, as set forth above.)

(Testimony of C. H. Glenn.)

Trial Examiner Lindsay: That may stand.

Q. (By Mr. Clark) By "they," to whom do you refer, Mr. Glenn? A. Boswell Company.

Q. All right.

And had Mr. Armour, in fact, made such complaint to you? A. Yes, sir.

Q. And when, please?

A. On the morning that I spoke to her; of the day.

Q. All right.

Now, was anything else said by you or Mrs. Dunn in that connection during this conversation?

A. Yes, sir.

Q. Please state what it was?

A. She told me that she didn't consider it was of anybody else's business what she did because she was on her own [2833] hours, and I told her that as far as the personal element was concerned, that it wasn't any of my business, but as far as the business element was concerned, I was going to make it my business, and if that thing was going to continue, I wanted her to hand me her resignation.

Q. All right.

Was that all of the conversation?

A. No, sir.

Q. Well, give us the rest of it, all that you can remember?

A. Mrs. Dunn cried. She told me that she was very sorry I felt that way about it, and I assured

(Testimony of C. H. Glenn.)

her that she must stop the thing because of the slips that were possible in doing a thing of that kind. She assured me she would stop.

Q. Is that all you can remember?

A. (Pause). I told her that there was—spoke to her about the dissension that was going on in the office.

Q. What did she say about it?

A. I told her that the girls were complaining, and that she must—that that dissension would have to stop in the office.

Q. Did you say anything to her about there having been a prior leak? A. Yes, sir.

Q. In the office, respecting Boswell Company?

A. Yes.

Mr. Mouritsen: Objected to as leading and suggestive, and [2834] move that the answer go out.

Mr. Clark: I will submit it.

Mr. Mouritsen: Until the Examiner can rule on it.

Mr. Clark: The answer may go out by stipulation, in order for the ruling to come in.

Trial Examiner Lindsay: Will you please stop leading the witness and allow him to testify.

Q. (By Mr. Clark) Will you please state whether or not anything was said during this conversation by you to Mrs. Dunn respecting any prior leak out of the Telephone Exchange affecting Boswell and Company?

Mr. Mouritsen: I will object to that as leading and suggestive.

(Testimony of C. H. Glenn.)

Mr. Clark: I will submit it. It is not leading,
Mr. Examiner.

Trial Examiner Lindsay: It may stand. Proceed.

Mr. Clark: Very well.

Q. Do you have the question in mind?

A. Yes.

They said—Albert Armour had called to mind that a couple of years before there had been a slip, a leak of information through our board, and that through that leak they had lost quite a valuable concession—one of their customers had lost a very valuable concession—and that if there were any more leaks, that they felt that they should hold the Tele- [2835] phone Company responsible.

Mr. Mouritsen: I move to strike that; as I understand the question, the witness started out and said "They said," and then gave all of this conversation.

Mr. Clark: I think he started "They said," and corrected it to Albert Armour said.

Trial Examiner Lindsay: Read back his answer, will you please?

(The record referred to was read by the reporter, as set forth above.)

Trial Examiner Lindsay: Did you blame Mrs. Dunn for that leak?

The Witness: No, sir.

Trial Examiner Lindsay: You didn't know who was the cause for that leak, did you?

(Testimony of C. H. Glenn.)

The Witness: They didn't say.

Trial Examiner Lindsay: All right.

The Witness: Said it went in across our board.

[2836]

Q. (By Mr. Clark) Now, Mr. Glenn, is this part of what you told Mrs. Dunn during this conversation that you are relating for us?

A. Yes, sir.

Q. In other words you told her all of this statement which had been made to you by Mr. Armour, is that true?

Mr. Mouritsen: Objected to as leading and suggestive.

Mr. Clark: I just want to be sure about it. I don't want him relating what Armour said.

The Witness: Yes, sir.

Q. (By Mr. Clark) Was there anything else said by either you or Mrs. Dunn on that occasion?

A. Yes, sir.

Q. Please state what it was.

A. I told her that there was too much dissension in the office, that that must stop. She told me that she would stop, that she would make every effort to stop the quarreling that was going on in the office.

Q. All right.

Now, at the time that you had this conversation with Mrs. Dunn, Mr. Glenn, had you heard anything whatsoever concerning any petition having been circulated by anyone here in Corcoran to have her discharged?

A. No, sir.

(Testimony of C. H. Glenn.)

Q. At the time you had this conversation with Mrs. Dunn, Mr. [2837] Glenn, had you heard anything whatsoever about her daughters, or either of them, having been seen down talking to the pickets in front of the Boswell plant?

A. No, sir.

Q. All right.

Did you have a subsequent conversation with Mrs. Dunn about her work at the office?

A. Subsequent?

Q. Afterwards, after this? A. Oh, yes.

Q. Did you have another conversation with her?

A. Yes, sir.

Q. When was that, please?

A. That was about the middle of February.

Q. And where did that take place?

A. At Mrs. Dunn's home.

Q. Was anyone else present?

A. Not that I know of.

Q. All right.

Please tell us what was said by either you or her.

A. Mrs. Dunn had called me to her home saying that she wanted to talk to me. When I got there she asked me if I had heard anything about a petition that was being circulated. I asked her what the petition was.

She said it was a petition to get her discharged because her daughters had gone down to the gin. [2838]

Q. You say this was about the middle of February? A. Yes.

(Testimony of C. H. Glenn.)

Q. All right.

A. I told her that I had not heard anything about any petition of that kind, that she needn't worry—then she went on to say that the girls had talked the morning before about the pickets being in down to the gin and she told them, asked them why they didn't go down there and see. The girls had said that they hadn't seen any pickets before, how it was worked, so she had advised them to go down there and see.

I told her that the fact of a petition being circulated could have no bearing at all on our plant, I couldn't take cognizance of that because we were a public service corporation and that we must keep neutral in everything of that kind.

Trial Examiner Lindsay: What did you mean then when you said or started to say she need not worry?

The Witness: Because she was fearful that this petition—she told me that they were petitioning me to fire her and I told her she needn't worry about that at all, I wouldn't take cognizance of such a petition, for her to go right ahead and just not say anything.

Trial Examiner Lindsay: And you didn't intend to fire her?

The Witness: No, sir.

Mr. Clark: All right. [2839]

Q. Now, Mr. Glenn, will you please tell us whether or not in fact you had heard that there

(Testimony of C. H. Glenn.)

was such a petition being circulated at the time of this conversation with Mrs. Dunn in the middle of February.

A. No, that is the first that I had heard of it, when she asked me about it.

Q. Very well.

And had you, prior to her telling you about it, heard anything whatsoever concerning her daughters being seen talking to the pickets down at the Boswell plant?

A. No, sir.

Q. All right.

May I have a recess at this time, Mr. Examiner?

Trial Examiner Lindsay: Yes; a ten-minute recess.

(At this point a short recess was taken, after which proceedings were resumed as follows:)

Trial Examiner Lindsay: Hearing called to order.

Mr. Clark: May I have the last question and answer read, Mr. Examiner?

Trial Examiner Lindsay: Yes.

(The record referred to was read by the reporter, as set forth above.)

Q. (By Mr. Clark) Now, Mr. Glenn, did you ever have any further conversations with Mrs. Dunn respecting her employment at the Corcoran Telephone Exchange? [2840]

A. Prior, did you say?

Q. No, any further conversations beyond that

(Testimony of C. H. Glenn.)

one in the middle of February. A. Yes, sir.

Q. When was the next time you talked to Mrs. Dunn with respect to that subject matter?

A. March 1st.

Q. And will you please tell us where that conversation took place?

A. At the telephone office.

Q. Was anyone else present other than you and Mrs. Dunn?

A. No, just Mrs. Dunn and myself.

Q. Now, between the conversation in the middle of February and this occasion that you have just located for us, had anything happened which prompted you to again talk to Mrs. Dunn?

A. Yes.

Q. All right.

Will you please state what that was?

A. Mrs. Woodruff had come to me and told me that she had——

Mr. Mouritsen (Interrupting): May I have the foundation for this laid?

Mr. Clark: May I ask that that go out, Mr. Examiner, as not responsive. I think the question called for what happened, what if anything happened which caused this further conversa- [2841] tion and it does not call for any conversation between the witness and Mrs. Woodruff.

Trial Examiner Lindsay: Yes, it may go out.

Read the question.

(The record referred to was read by the reporter, as set forth above.)

(Testimony of C. H. Glenn.)

Trial Examiner Lindsay: Do you understand?

Q. (By Mr. Clark) Tell us what happened, not what anyone said, but what happened.

Trial Examiner Lindsay: Do you understand the question?

The Witness: Yes, I understand the question.
(Pause)

Mr. Mouritsen: Let the record indicate a pause.

Mr. Clark: I will withdraw the question, Mr. Examiner.

Trial Examiner Lindsay: Can't you answer that question, Mr. Witness?

The Witness: I don't—I—— (Pause) ——no, sir, I can't recall it.

Mr. Clark: I will later elicit the Woodruff conversation, Mr. Examiner.

Q. Directing your attention, Mr. Glenn, to the conversation you told us occurred between you and Mrs. Dunn on March 1st of this year——

A. (Interrupting) Yes, sir.

Q. (Continuing) I will ask you to please tell us what you said to her and what she said to you on that occasion. [2842]

Mr. Mouritsen: Could we have this foundation laid?

Mr. Clark: Yes, indeed; the time, place and persons present have all been testified to.

The Witness: The meeting of March 1st?

Q. (By Mr. Clark) Your conversation with Mrs. Dunn on March 1st of this year that you told us took place, what happened, what was said.

(Testimony of C. H. Glenn.)

A. I told Mrs. Dunn—I called Mrs. Dunn into the back office and I told her that Mrs. Woodruff had told me that she was—she had made every effort to get along with Mrs. Dunn, that she found it impossible to do so and that she wanted to quit. I told Mrs. Dunn that on account of her physical condition and the use of liquor that was so offensive to the girls, that I wanted her to resign.

She told me that she couldn't resign, that she simply had to work.

Q. Was anything else said on that occasion that you can give us at this time?

A. (Pause) She said that she would make every effort to—she would go out and apologize to the girls and make every effort to get along. (Pause) I think that was about all the conversation.

She said that she simply could not—that she simply could not resign.

Q. All right. [2843]

A. She said that she had been offered a job out at Tommy Craine's and if she had known this was coming up, she would have taken that position.

Q. I see.

Now, was anything said during that conversation, Mr. Glenn, in any manner concerning the existence of the labor trouble at the Boswell gin?

A. Yes. We spoke about the—she took—no, not at that meeting.

Q. All right, then. You are sure of that? [2844]

A. Yes, sir.

(Testimony of C. H. Glenn.)

Q. Have you given us substantially all of the conversation that occurred at that time, that is, on March 1st, between you and Mrs. Dunn?

A. In substance, I think.

Q. All right.

Now, prior to that time, had Mrs. Woodruff, in fact, advised you that she was going to quit?

A. Yes.

Q. Did anything happen later on the day of March 1st of this year concerning Mrs. Dunn's employment at the Corcoran Telephone Exchange?

A. Yes, sir.

Q. All right.

Will you please state what that was?

A. Mr. Dunn—Mr. Woodruff came to the office and told me that Mrs. Woodruff—

Mr. Mouritsen (Interrupting): May I have the foundation?

Mr. Clark: All right.

Trial Examiner Lindsay: Yes.

Mr. Clark: May I have the question read back, Mr. Examiner?

Trial Examiner Lindsay: Yes.

(The record referred to was read by the reporter, as set forth above.) [2845]

Q. (By Mr. Clark) Was it a conversation between you and Mr. Woodruff? A. Yes.

Q. All right.

Where did that take place?

A. It took place in my office in the bank building.

(Testimony of C. H. Glenn.)

Q. Was anyone else present? A. No, sir.

Q. What time of day was it, do you remember?

A. It was in the morning. I would judge about half past 8:00, pretty early in the morning.

Q. All right.

This is March 1st, is that right?

A. Yes, sir.

Q. Tell us what Mr. Woodruff said, if anything, and what you said?

A. Mr. Woodruff told me that Mrs. Woodruff had decided to resign; resign her position.

Q. Anything else?

A. No, I think that was all he told me at that time.

Q. Was this before or after your conversation with Mrs. Dunn on that day?

A. It was before.

Q. All right.

Then you had the conversation with Mrs. Dunn you have told [2846] us about, is that right?

A. Yes.

Q. Now, the thing I am asking you, Mr. Glenn, is, did anything further happen after your conversation with Mrs. Dunn which related to her employment? A. Yes, sir.

Q. At the Corcoran Telephone Exchange?

A. Yes.

Q. All right.

What was that?

A. After I had talked with Mrs. Dunn in the

(Testimony of C. H. Glenn.)

morning, I went out to the ranch, and when I came back after dinner, as I entered the office, Mrs. Dunn ran past me, sobbing hysterically.

Q. All right.

What time of day was this?

A. It was in the afternoon, I should judge about 2:00 o'clock.

Q. And by "dinner", you referred to the mid-day meal? A. Luncheon, yes, sir.

Q. And this was as you were returning to the Corcoran Telephone Exchange office, is that correct? A. Yes, sir.

Q. All right.

Now, what, if anything, did you do?

A. I went on into the office, into the back office, and I sat there for a few minutes, and the phone rang; and Mrs. Dunn— [2847] —it was Mrs. Dunn calling—and she asked me if I would come to the house and talk to her. I told her, No, that I didn't want to talk to her any more now—at that time, and she asked me if I could come to her house, and I told her no, I thought the best thing for her to do was stay at home and rest.

She asked me if I was going to let her come back, and I told her I didn't know, that I would let her know later.

Q. All right.

Now, at the time you saw Mrs. Dunn running out the door of the office of the Exchange sobbing, did you stop and talk with her at that time?

(Testimony of C. H. Glenn.)

A. No, sir.

Q. Did you observe anything after you entered the office of the Exchange with respect to the remaining operators who were there?

A. Well, I noticed the other operators were very—their faces were white, and they were very much distraught, seemed very much distraught.

Mr. Mouritsen: I move that that last go out as giving a conclusion of the witness.

Trial Examiner Lindsay: May I have it read back?

(The answer referred to was read by the reporter, as set forth above.)

Mr. Clark: "Seemed very much distraught," may go out. [2848]

Mr. Mouritsen: And also the preceding word "distraught." I move that go out.

Mr. Clark: I submit that.

Trial Examiner Lindsay: It may go out, that is, the last one.

Q. (By Mr. Clark) Did you make any inquiry from any of them concerning what had happened?

A. No, I didn't.

Q. All right.

Then you had this telephone conversation you have told us about with Mrs. Dunn, is that correct?

A. From the back office, yes, sir.

Q. And now, what next occurred, if anything, with respect to the relationship of Mrs. Dunn to the Corcoran Telephone Exchange?

(Testimony of C. H. Glenn.)

A. Well, that evening about 5:00 o'clock Mr. Dunn came to my office at the bank building.

Q. All right.

Is that Mr. Dunn, John E. Dunn, the husband of this lady?

A. It is Ernest Dunn. I don't know.

Q. Very well.

Her husband, anyway; is that correct?

A. Yes.

Q. And did you have a conversation with him at that time? A. Yes, sir. [2849]

Q. Was anyone else present?

A. I believe that our secretary, Miss Nonhof, was in the office.

Q. Where was this conversation?

A. In the office in the bank building.

Q. That is, your office in the bank building?

A. Yes, sir.

Q. Will you please tell us whether or not there were other desks for other people in that office?

A. Yes, sir, there are.

Q. In other words, is it all one large room?

A. Yes, sir.

Q. Do you remember whether or not anyone else was present in the room at the time you talked to Mr. Dunn?

A. I don't think—I think that when Mr. Dunn came in, I think that Miss Nonhof was in the office, but I think she went out.

Q. I see.

(Testimony of C. H. Glenn.)

Now, please tell us what was said by you to Mr. Dunn, and what he said to you respecting his wife's connection with the Corcoran Telephone Exchange, or this matter?

A. Well, Mr. Dunn asked me what I was—what I was doing with his family. And I told him that I—that it was his family, and he would have to answer that himself.

He looked at me a minute, and I asked him if he wanted to [2850] come in and sit down.

He did go in—came behind the desk, and sat down.

He then asked me what I—I think he asked me why I had it in for his family.

I told him that I didn't have it in for his family at all, that I had always shown Mrs. Dunn every consideration in all of the years she had been employed by me, and I was surprised that he should ask me a question like that.

He said that this whole thing of "my wife's being discharged and the girls being blamed for it, for going down to the gin," was very embarrassing to the family.

I told him that the fact of the girls' going down to the gin at that time was a very unfortunate incident, because the whole community was in a jitter, that the 1934 labor trouble was still fresh in their minds, and that just as long as that car, that picket car, was down there, it would remain so.

He asked me then—he said, "Why did you fire Mrs. Dunn?"

(Testimony of C. H. Glenn.)

And I told him that I fired Mrs. Dunn because of her physical condition, that she had to drink liquor to sustain herself in order to keep going, which was very offensive to the other girls, and that it had got to a place where I had to decide between Mrs. Woodruff and Mrs. Dunn, and I let Mrs. Dunn go for that reason.

He then said to me—he said, “Isn’t it very queer—” he said, “I think it is very queer that the girls going—” [2851] “very queer—” I think he said it was very queer that we should carry—that the girls should be blamed for carrying messages down to the gin, if anyone wanted to get information to the pickets.

I told him I didn’t know a thing about the girls going down there at all, that I hadn’t received a—no—yes, that I hadn’t received any information about any—he spoke about a petition—to go back.

To go back a little. When he talked to me first, he said that the fact that a petition had been circulated asking that Mrs. Dunn be discharged because the pickets—because the girls had gone down to those pickets, was very embarrassing to them; and I told him that the pickets—the girls going down there had nothing to do with it at all, with the discharge of Mrs. Dunn, that it couldn’t enter into our—in any way with the office, because we were a public service corporation and that we couldn’t take cognizance of anything of that kind. [2852]

(Testimony of C. H. Glenn.)

Q. Mr. Glenn, will you please tell us whether or not on that occasion, that is, at that time and place, you stated in substance or effect to Mr. Dunn——

Mr. McTernan (Interrupting): Can we have the page, please?

Mr. Clark: 2093 at line 18 of the transcript, which is the transcript for June 7, volume XV.

Have you found it?

Mr. McTernan: Yes.

Mr. Clark: May I have the question read down that far, Mr. Examiner?

Trial Examiner Lindsay: Yes. Read the question.

(The question referred to was read by the reporter, as set forth above.)

Q. (By Mr. Clark) That is, at this time and place you stated in substance or effect to Mr. Dunn at the outset of the conversation:

“You know there has been trouble, labor trouble, at the Boswell gin.”

Mr. Mouritsen: May we read that first part? I think that ties in with the witness' testimony, what Mr. Dunn said to Mr. Glenn right at the beginning of that conversation.

Mr. Clark: I am not asking that now.

May I have it read back, Mr. Examiner?

Trial Examiner Lindsay: Yes. [2853]

Mr. Clark: I will reframe the question.

Q. Mr. Glenn, will you please tell us whether or not on this occasion, that is, during your conversa-

(Testimony of C. H. Glenn.)

tion on the evening of March 1st of this year at your office in the Corcoran Bank Building to which you have just testified, you stated in substance or effect to Mr. Dunn at the outset of that conversation: "You know there has been trouble, labor trouble, at the Boswell gin"?"

A. Yes, I told him—I told him that there had—that in talking of the 19—telling him of the 1934 trouble when I finished that he told me he thought that trouble had all been taken care of; and I told him that that labor trouble had not been taken care of.

Q. Have you anything further to add?

Mr. Mouritsen: Now, let the witness continue.

The Witness: Just a moment.

I told him that the labor trouble had not been taken care of, that it would—that the community was all ajitter because the car down there, the picket car, was still there.

Q. (By Mr. Clark) Well, the thing I asked you, Mr. Glenn, was whether or not you commenced your conversation on that occasion with Mr. Dunn by saying in substance or effect: "You know there has been trouble, labor trouble, at the Boswell gin"?"

Will you please answer that. [2854]

Mr. Mouritsen: I object to it on the ground it has been asked and answered. The witness has been testifying just now about the first thing he said.

Mr. Clark: I think I am entitled to an explanation of that in view of the ambiguity there.

(Testimony of C. H. Glenn.)

Trial Examiner Lindsay: He answered yes, and went on with a resume of what happened.

Mr. Clark: Do I understand the objection is being sustained?

Trial Examiner Lindsay: Do you want to change that answer at all, Mr. Glenn?

The Witness: May I go back to the first of that conversation, Mr. Referee?

Mr. Clark: May I have—may I just have the question re-read to him? That is all.

Trial Examiner Lindsay: Read the question.

(The question referred to was read by the reporter, as set forth above.)

Q. (By Mr. Clark) Just answer the question I asked you one way or the other, yes or no.

Trial Examiner Lindsay: He has answered it, Mr. Clark.

Read the answer.

(The answer referred to was read by the reporter, as set forth above.)

Mr. Mouritsen: On that basis I submit, Mr. Examiner, [2855] it has already been asked and answered.

Mr. Clark: I would like to ask if the witness has any further explanation of that, if I may.

Trial Examiner Lindsay: All right.

The Witness: I don't get that.

Q. (By Mr. Clark) Do you understand what the word "outset" means?

(Testimony of C. H. Glenn.)

A. Yes, sir. Yes, sir.

Q. I will ask you whether or not the first thing you said to Mr. Dunn on that occasion was in substance or effect this: "You know there has been trouble, labor trouble, at the Boswill gin"?

Was that your opening remark to him?

A. I don't remember, sir.

Q. All right.

Now, I will further ask you, Mr. Glenn, whether at that time and place you stated in substance or effect to Mr. Dunn the following:

Mr. McTernan: May we have the page?

Mr. Clark: Page 2095.

Mr. Mouritsen: Line?

Mr. Clark: Line 12, referring to the discussion about the labor trouble at the Boswell plant.

The Witness: Yes, sir.

Q. (By Mr. Clark) "Wait a minute. This all ties in to- [2856] gether."

A. No, there was no such remark as that.

Q. I will further ask you whether at that time and place, Mr. Glenn, Mr. Dunn stated in substance to you: "Well, Mr. Glenn, you know and I know that they cannot hurt your telephone business. As far as your farm interests are concerned, I don't know anything about how you are tied up."?

A. I think Mr. Dunn did say that.

Q. I will further ask you, Mr. Glenn, whether at that time and place, namely, during your conversation on the evening of March 1st at your office

(Testimony of C. H. Glenn.)

with Mr. Dunn, you made any reference at all to 8 or 9 men having requested you to discharge Mrs. Dunn? A. Yes, I did.

Q. Will you please state what was said concerning that, if anything?

A. I told Mr. Dunn when he asked me why I had discharged Mrs. Dunn—I told him because of complaints that were coming, so many; and he asked me what those complaints were.

I had in mind one that had happened in the office, and I told him that a friend of mine had come to me not very long ago there in the office and that he had told me—he had told me that he had something that he wanted to say to me; he didn't want to hurt my feelings, but he thought I should know. And he told me that a night or so before—— [2857]

Mr. Mouritsen (Interrupting): May we have the name of this man?

Mr. Clark: When we get to it. If I interrupted—I will withdraw that. Let's have all he said. Then I will ask him that.

The Witness: He told me that a night or so ago he was at a party where eight or nine of the fellows had began to talk about the telephone exchange and the rotten service that they were getting when Mrs. Dunn was on the board, and that if it hadn't have been for their friendship for me that they would have gotten out a petition to the Railroad Commission asking that I discharge her.

Q. (By Mr. Clark) Now, anything else?

(Testimony of C. H. Glenn.)

A. He asked me who it was that made that remark, and I refused to tell him.

Q. Now, who was it, please?

A. It was Blake Crary, cashier of the First National Bank.

Q. Here in Corcoran? A. Yes, sir.

Q. And how long prior to March 1st of this year was it that Mr. Crary had told you about this discussion concerning your business?

A. I think it was about January 1st.

Q. I see.

What was the next thing, Mr. Glenn, if anything, that [2858] happened so far as Mrs. Dunn's employment with the Corcoran Telephone Exchange was concerned?

A. Well, just as Mr. Dunn got ready to leave the office he said to me: "There is one thing about me," he said, "I am not tied down to anyone, and can do as I please."

Q. Did you make any reply to that?

A. No, I didn't at the time.

Q. All right.

What, if anything, next occurred so far as Mrs. Dunn's employment was concerned?

A. I got to thinking over the night—that evening——

Q. (Interrupting): Just a minute, please. I don't care what you were thinking. I want to know what the next act was, if any, which occurred—which happened so far as Mrs. Dunn's employment

(Testimony of C. H. Glenn.)

was concerned.

A. The next morning I called up Mrs. Dunn's residence. [2859]

All right.

Who did you talk to?

A. I talked with Mrs. Dunn.

Q. About what time was it, do you remember?

A. It was pretty early, about 8:30 probably.

Q. What, if anything, did you say to her, and what did she say?

A. I asked Mrs. Dunn if Mr. Dunn was home. She said that he was not home, and I told her that when he did come home to tell him that I would like to talk with him.

She said that she could get him back right away if I wanted him, and I told her that it wasn't necessary.

She asked me if I—if *he* could sit in on the conversation, and I told her no, but that Mr. Dunn could tell her anything that might be said.

About 11:00 o'clock——

Mr. Clark (Interrupting): Now, I want this conversation, please, Mr. Glenn, all you remember of it.

Trial Examiner Lindsay: Have you told us all of it?

The Witness: That is all of that conversation.

Trial Examiner Lindsay: All right. Proceed.

Mr. Mouritsen: I move to strike that upon the ground that it is not responsive to the question; that it is incompetent, irrelevant and immaterial, and has no bearing upon this case. [2860]

(Testimony of C. H. Glenn.)

Mr. Clark: I will submit it.

Mr. Mouritsen: No connection shown between Mrs. Dunn's employment and that conversation.

Mr. Clark: We have Mr. Dunn there the evening before inquiring about it, so I guess it has some connection, your Honor.

Trial Examiner Lindsay: It may remain.

Mr. Clark: All right.

Q. During that conversation, did Mrs. Dunn say anything to you about her working at the Exchange further? A. Yes, she asked——

Q. (Interrupting): Please tell us what that was?

A. She asked me if I was going to let her come back, and I told her no.

Q. Is that all that was said on that subject?

A. At that time, yes.

Q. All right.

Now, up to that time, Mr. Glenn, had you ever seen any petition circulated by anyone here in Corcoran requesting Mrs. Dunn's discharge from the Corcoran Telephone Exchange for any reason?

A. No, sir.

Q. Have you ever seen such a petition?

A. No, sir.

Q. Was such a petition ever presented to you by anyone whom- [2861] soever? A. No, sir.

Q. Had there been, prior to March 2nd of this year, any pressure of any kind exerted upon you by anyone whomsoever to discharge Mrs. Dunn?

(Testimony of C. H. Glenn.)

Mr. Mouritsen: Objected to as calling for a conclusion of the witness.

Mr. Clark: The word was used, and I think somebody attempted to define it, Mr. Examiner.

Trial Examiner Lindsay: May I have the question, please?

(The record referred to was read by the reporter, as set forth above.)

Mr. Clark: Mrs. Dunn used the term.

Trial Examiner Lindsay: He may answer.

The Witness: No, sir.

Mr. Clark: All right.

Q. Now, what happened after the telephone conversation between you and Mrs. Dunn on this morning of March 2nd, if anything?

A. Along about 11:00 o'clock—I think it was—perhaps about the middle of the forenoon, Mr. Dunn showed up at the office.

Q. And did you have a conversation with him at that time? A. Yes, sir.

Q. Was anyone else present? [2862]

A. No, because Mr. Dunn—I picked Mr. Dunn up in my car in front of the office there.

Q. I see.

Well, when he got there did he come into your office?

A. No. We got in the car and rode around.

Q. All right.

Now, what, if anything, did you say to Mr. Dunn,

(Testimony of C. H. Glenn.)

and what did he say to you on that occasion respecting the fact that his wife had been discharged by you?

A. I told Mr. Dunn that there was one thing I wanted to correct, that when he had left the office the night before he had made the remark that he wasn't tied down to anybody and could do what he pleased; that I felt, after thinking it over, that he had meant that I was tied down to Boswell interests. I told him that I wanted to assure him that Boswell had nothing whatever to do with the discharge of Mrs. Dunn, and that my financing never in any way—the financing of my crops through Boswell—had never had anything to do with the telephone stock which remained in the bank ever since I had bought it.

I also asked him—I said—“There is one thing about this whole business that I cannot understand, and that is this: How a man with a position such as you hold, with one son working at the gin, at the Anderson-Clayton gin, with a daughter working in a store and with the other boy giving music lessons, with a beauty shop which Mrs. Dunn had assured me had all the [2863] clientele they could take care of, and a nice home to go to, why it was necessary that Mrs. Dunn, in her present physical condition, they were so insistent on having her go back to work at the office.”

He told me that he wasn't interested so much in Mrs. Dunn going back to work at the office as he

(Testimony of C. H. Glenn.)

was of clearing the girls', any reflection that might be cast upon the girls for going down to the Boswell gin.

I told him that the Boswell—the girls going down there had nothing whatever to do with the discharge of Mrs. Dunn.

Q. Was that substantially all that was said between you and Mr. Dunn on that occasion?

A. I think it was, except that when he left, he told me, he said, "Well, Mr. Glenn, there is one thing," he said, "what that telephone needs down there is a manager," and I agreed with him.

Then he said he was going to ask for an open hearing in this whole case.

Mr. Clark: You may cross examine.

Cross Examination

Q. (By Mr. Mouritsen): Now, Mr. Glenn, I believe you stated that on one occasion on your cross examination, during your first conversation with Mr. Dunn on March—on or about March 1st—that the first thing that you said to him——

Trial Examiner Lindsay (Interrupting): On direct exami- [2864] nation.

Mr. Mouritsen: On direct examination—the first thing you said to him was, in substance, "You know there has been trouble, labor trouble at the Boswell Gin."

Do you recall testifying to that effect on one occasion? A. Yes, sir.

Q. And I believe you stated that you said to

(Testimony of C. H. Glenn.)

him that the whole community was in a jitter about the situation, is that correct? A. Yes, sir.

Q. And, as a matter of fact, the whole community was in a jitter at that time about the matter, wasn't it? A. About the labor matter.

Q. And, as a matter of fact, a number of men had come to you about that labor trouble, had they not? A. No, sir.

Q. How did you know, then, that the community was in a jitter about this labor trouble?

A. Because I live here, and I am right a part of it. [2865]

Q. You had talked with other men about that labor trouble? A. Yes, sir; yes.

Q. And am I correct in stating that that was the first thing you mentioned to Mr. Dunn when he came to see you about his wife being discharged?

A. No, sir.

Q. You don't recall testifying upon your examination by Mr. Clark that that was the thing that you said at the outset of your conversation?

A. Which one? The first or the second one?

Q. The conversation on March 1st.

A. March 1st—no—Mr. Dunn came to the office. He asked me what I was doing with his family and what was the matter with them. I told him it was his family, not mine, he would have to answer that question, that I couldn't.

Mr. Clark: Mr. Mouritsen is doing much better than I could.

(Testimony of C. H. Glenn.)

The Witness: He is bringing to mind stuff.

Trial Examiner Lindsay: Now, just a moment.

Mr. Clark: I ask that that remark go out, Mr. Examiner.

Mr. Mouritsen: I am quite content to have it stay in. It shows the attitude of the witness.

Mr. Clark: Let it stay in. I don't care.

Trial Examiner Lindsay: All right. Now listen, gentlemen. Under all rules of practice the witness is sub- [2866] ject to cross examination.

Now, Mr. Glenn, when you are asked a question you may answer the question and just forget about any remarks.

The Witness: Yes.

Trial Examiner Lindsay: You are under the jurisdiction of this court.

Q. (By Mr. Mouritsen): Now, is there anything further that you can recall in that March 1st conversation that was said regarding any labor trouble at the Boswell gin, Mr. Glenn?

A. I told Mr. Dunn that the 1934—he asked me—he told me that he thought that the labor trouble had been settled and I told him that it hadn't been settled by any means, and would not be settled because—it had not been settled because the paralysis caused by the labor trouble of 1934 was still fresh in the minds of this community and that as long as that labor car, that picket car remained down there, that the people would still be jittery about this labor trouble.

(Testimony of C. H. Glenn.)

Trial Examiner Lindsay: Well, is that the first thing that you said to him after he started this conversation?

The Witness: No, I don't think it was.

Q. (By Mr. Mouritsen): Well now, in other words, Mr. Glenn, the first thing that Mr. Dunn said to you when he came to see you on March 1st was, "What have you against my family," isn't [2867] that correct? Or in substance to that effect?

A. He asked me what was the matter with his family and I told him that it was his family and that he would have to answer that question himself.

Q. And then was it that you started to talk about the labor trouble at the labor gin, told him the community was in a jitter?

A. No. The thing that he said to me then, he said, "Well, this whole thing is very embarrassing to my family, the idea of my wife being discharged and the girls being accused of carrying messages to the gin, to the fellows at the gin."

I told him that it was a very unfortunate thing that the girls had gone to the gin just at this time because of the keen feeling of the labor—of 1934.

Q. And then what did you say?

A. The next question—I went on to explain that the 1934 trouble was still fresh in the minds of everyone here and that the whole community was in a jitter. I also told him this, that ordi-

(Testimony of C. H. Glenn.)

narily the girls going down there would never probably have been noticed and that it was a very unfortunate incident that they went just at this time.

Q. Anything further that you recall saying about the labor trouble?

A. Yes. He then asked me why I had discharged his wife—not about the labor trouble.
[2868]

Q. And what was the first thing—no, strike that.

As a matter of fact, when you were discussing the labor trouble, didn't Mr. Dunn say to you, Mr. Glenn, "I am not interested in all that. I came down here to ask you why you have discharged my wife?"

A. Yes, sir.

Q. He made that statement?

A. Yes, sir.

Q. You recall that distinctly? A. Yes, sir.

Q. And then after he made that statement, "Mr. Glenn, I am not interested in all that. I came down here to ask you why you have discharged my wife," didn't you say, "Now, wait a minute, this all ties in together"?

A. No, sir; no, sir.

Mr. Clark: May I have the page of the transcript?

Mr. Mouritsen: 2095.

Q. And then, referring to your conversation on the next day, the one in the car that you had

(Testimony of C. H. Glenn.)

with Mr. Dunn, wasn't it in the conversation in the car on March 2nd that something was said regarding the nine men who came to see you about having his wife discharged?

Mr. Clark: Now, just one moment, Mr. Examiner, I submit that is a misstatement of the gentleman's testimony.

Trial Examiner Lindsay: Well, he is not referring to [2869] this gentleman's testimony, as I understand it. He is referring to the testimony of Mr. Dunn.

Mr. Clark: Well, that is quite all right. I think he asked Mr. Glenn whether it wasn't in the car that the statement concerning the nine men was made and Mr. Glenn has given you the facts on that.

Trial Examiner Lindsay: He has given me his side of the facts.

Mr. Clark: I don't want that put in his mouth is all.

Trial Examiner Lindsay: Well, you may reframe your question. He didn't quite understand you.

Q. (By Mr. Mouritsen): Wasn't it in the conversation on March 2nd in the car that something was said about the nine men coming to see about Mrs. Dunn's discharge? A. No, sir.

Mr. Clark: Same objection.

Trial Examiner Lindsay: He may answer—he has answered. It may stand.

(Testimony of C. H. Glenn.)

Mr. Clark: May I point out, Mr. Examiner, that the answer "No" to that indicates that there was such a statement made on some other occasion. Mr. Mouritsen asks this man whether it was in the car that a statement concerning nine men coming to see him about Mrs. Dunn's discharge was made, and he says, "No," which indicates that it might have been made some other occasion. That is the viciousness of the [2870] question.

Trial Examiner Lindsay: You may clear it up, Mr. Mouritsen.

Q. (By Mr. Mouritsen): Well, I will ask you if at any other time anything was said about nine men coming to see you about having Mrs. Dunn discharged. A. No, sir.

Trial Examiner Lindsay: Does that satisfy you, Mr. Clark?

Mr. Clark: Yes, sir.

Mr. Mouritsen: Mr. Examiner, it is now 15 minutes after 12:00.

Trial Examiner Lindsay: We will adjourn until 2:00 o'clock.

(Thereupon, at 12:05 o'clock p. m., a recess was taken until 2:00 o'clock p. m., of the same date.) [2871]

After Recess

(Whereupon, at 2:00 o'clock p. m., the hearing in the above-entitled matter was resumed, pursuant to the recess.)

(Testimony of C. H. Glenn.)

Trial Examiner Lindsay: Hearing called to order.

Mr. Clark: The respondents are ready.

Mr. Mouritsen: Ready for the Board.

Mr. Clark: Mr. Glenn, please.

C. H. GLENN

the witness on the stand at the time of the recess, having been previously duly sworn, resumed the stand and further testified as follows:

Cross Examination

(Continued)

Q. (By Mr. Mouritsen): Now, Mr. Glenn, I believe you testified regarding this conversation with Mr. Dunn on March 1st, that the whole community was in a jitter at that time, is that correct? A. Yes, sir.

Q. And you recall giving that testimony this morning, is that correct? A. Yes, sir.

Q. Now, I will ask you, Mr. Glenn, what was the basis for the statement that you made to Mr. Glenn at that time—to Mr. Dunn?

A. I was explaining to Mr. Dunn—he told me he thought the trouble was over and I was explaining to Mr. Dunn, during [2872] that conversation, that the trouble was not over by any means and that it would not be over as long as that picket car was down there at the gin.

Q. But with reference to your statement to the effect that the whole community was in a jitter,

(Testimony of C. H. Glenn.)

what basis did you have for making that statement? A. From my own observations.

Q. Now, will you tell us what your observation had been that led you to make the statement to Mr. Dunn that the whole community was in a jitter at that time?

A. Well, it was from conversations that I had heard. Just as I explained, the 1934 trouble that we had here was too fresh in the minds of everybody. The whole town at that time was just paralyzed here for 30 days during that strike and as long as this strike down here threatened, why it was just—everyone had it right on their minds. This is an agricultural town—community.

Q. Well, that was in 1934 and that was also a labor difficulty, wasn't it? A. Yes.

Q. Now, I believe you stated that the basis for your statement to Mr. Dunn that the whole community was in a jitter was conversations that you had heard, is that correct? A. Yes, sir.

Q. And can you tell us the names of a few people with whom [2873] you had such conversations, or the names of people who engaged in conversations that you heard?

A. Most any of them.

Q. Can you name a few of those that come to your mind, first?

A. Yes. I will name J. W. Guiberson of the bank.

Q. And who else, please?

(Testimony of C. H. Glenn.)

A. I will name R. P. Williams, of the grocery store. I will name Fred Carroll of the Light and Power Company over here.

Q. And did you ever have or ever hear any conversations with Mr. Boyett about that subject?

A. No, I have never talked with Mr. Boyett.

Q. And give us the names of a few more that you recall with whom you talked.

A. Well, I talked with Mr. Maroot of the grocery store; talked with Dick Hart.

Q. And who is Dick Hart?

A. Dick Hart is my partner here in my office.

Q. Continue.

A. (Pause.) I don't just remember now, but we were all talking. It was just a common talk. We are a small community here and with a thing like this——

Mr. Mouritsen (Interrupting): Now——

Mr. Clark (Interrupting): Just a minute, please. Let [2874] him finish.

Q. (By Mr. Mouritsen): Have you completed, Mr. Glenn?

A. Well, go ahead, Mr. Mouritsen. Pardon me.
[2875]

Q. Now, can you give us the names of any more with whom you can recall having talked about this matter?

A. Well, I don't believe I do just at the present time.

Earle Lewis of the Farmers Lumber Company.

(Testimony of C. H. Glenn.)

I don't believe I remember any more just now.

Q. Now, I believe you stated that you consider this as an agricultural community.

Did you talk with any farmers about that subject—and when I refer to “that subject,” I am referring to the statement that you made to Mr. Dunn that the whole community was in a jitter at that time? A. Yes, sir.

Well, I don't remember that I did, Mr. Mouritsen. I wouldn't say I didn't.

Q. But is it correct that you testified earlier that you talked with practically every one in the community about the matter at that time?

A. No, I was talking in general when I was talking that time, just in generalities, Mr. Mouritsen. Maybe I covered a lot of territory, but believe me, it was pretty strong feeling among those I did talk to.

Q. Can you recall the names of any others with whom you talked?

A. George Cutter of the Cutter Milling Company, Lyle Weir of the Corcoran Milling Company. It was just the topic of [2876] conversation around.

Q. But you don't recall having discussed that with a single farmer, is that correct?

A. I would not say that, Mr. Mouritsen, at all, no. I wouldn't say that I hadn't.

Q. Who are some of the farmers with whom you discussed it? As I recall it, you have given us the names of a number of business men, or their connection with some other.

(Testimony of C. H. Glenn.)

A. Yes, they are in the community here.

Trial Examiner Lindsay: There is one objection there I believe that hasn't been ruled on.

Mr. Clark: I will withdraw the objection. I only got it half out anyway.

The Witness: I discussed it with Louie Robinson.

Trial Examiner Lindsay: Is that Louis T. Robinson?

The Witness: Yes, sir.

Well, I don't remember discussing it with the farmers much. I don't remember of having discussed it with any farmers.

Q. (By Mr. Mouritsen): Now, when did you become president of the Corcoran Telephone Exchange, Mr. Glenn? A. 1924.

Q. And——

A. (Interrupting): 1926, pardon me. 1926.

Q. When did you become the majority stockholder?

A. At that time. I think it was in September, September about [2877] the 12th, I think, that the—when I purchased the stock of the Exchange.

Q. And between that time and the fore part of this year, had you purchased any equipment for the Exchange in the amount of, say, as much as \$500.00?

Mr. Clark: I object to that on the ground—well, I will withdraw that.

The Witness: That is, up to the first of this year, did you say, Mr. Mouritsen?

(Testimony of C. H. Glenn.)

Q. (By Mr. Mouritsen): Yes. A. Yes.

Q. Can you recall when you made any such purchase prior to that time in the amount of \$500.00?

A. No, I couldn't. I doubt very much whether I had up to that time.

Q. Yes.

Now, when did the—strike that.

Was the switchboard now in operation installed in the Exchange at the time when you took it over?

A. Yes, sir.

Q. And do you know how long prior to the time that you had taken it over that switchboard was in operation?

A. Well, I couldn't, Mr. Mouritsen. That belonged to Mr. Cromley who died; and while I was pretty closely associated with him, I wasn't very interested in the thing, enough to know that. [2878]

Q. So that to your knowledge anyway the switchboard now in use is over 13 years old, isn't that correct? A. Yes, that is correct.

Q. Now, haven't you, Mr. Glenn, on a number of occasions received complaints regarding the operation of that switchboard or the phone service that you render? A. I don't get that.

Q. I say, haven't you in the past and over a period of years received complaints regarding the use of this old switchboard?

A. Oh, yes, that is true.

Q. And as a matter of fact isn't it more or less

(Testimony of C. H. Glenn.)

a standing joke between you and your friends regarding the service at the Exchange?

A. No, sir; it is not by any means.

Q. And as a matter of fact haven't you attempted to repair the switchboard so that the wires don't become crossed in the switchboard?

A. No, sir. Let me—may I explain something there?

Trial Examiner Lindsay: Yes.

Q. (By Mr. Mouritsen): Surely.

A. Those boards—the only thing that is old about those boards is the cabinet. The wiring is replaced just like a part of an automobile that is worn, so that all of the wiring that is inside of that and most of the jacks have been re- [2879] placed. You are replacing them all of the time. Every time a part—anything gets the matter with them they are replaced—that part is replaced.

There are just two places that move on one of those things, and that is the two switches, and that is all; but when anything goes wrong you just take the plug or the switch out and put in a new one and you are right square up.

If I went out to buy a switchboard today I would buy exactly what I have in the office for this type of a phone.

Now, this is a magneto.

Q. Well, as a matter of fact, Mr. Glenn, if you attempted to install a different type of switchboard at this time, it would be necessary to install all different types of phones, wouldn't it?

(Testimony of C. H. Glenn.)

A. Yes, it would, Mr. Mouritsen. A magneto telephone system will take—will carry—up to about 400 subscribers, when it pays to go into a manual. Now a manual is where you just lift the thing up and it automatically—the connection is automatically made. You don't ring.

You see, we have a ringer box with ours. Now we have—that is because of the economy in running. A common battery—when you go into the manual system it is carried by a common battery where you have a battery room that is a very expensive proposition to run. You have got to have 400 subscribers at least, approximately 400 subscribers, to pay to run and to go [2880] into the manual form. Ours is a magneto. It is just as good an exchange as you can possibly get any place if you go to a place new, but it is one of the ringer kind and it is made that way because we haven't subscribers enough to carry—you can't afford to carry it.

Q. Do you know of any other place where a system of this type is in operation?

A. Oh sure, they are all over the country.

Q. Well, do you know of any other? Can you name a specific place?

A. Yes. I can name one over at Stratford, about 20 miles to the northeast of us. Until you get them up, Mr. Mouritsen, unless there is about 400 subscribers, they simply do not put in a manual system.

(Testimony of C. H. Glenn.)

Q. Well, I will ask you if on this magneto type of switchboard it is possible for an operator to know that a long-distance call has been completed without opening the circuit and listen if the people are talking?

A. No, it is not, Mr. Mouritsen. They have to call in, see. They have to open a switch and say, "Are you busy?"

On a manual, you see, there is a light that indicates when that line current has been shut off, but on a magneto set there is no way of knowing. When you ring in there is a little sort of a disc drops down to indicate, see, that it is ringing, and a sort of a buzzing, but on the manual a light [2881] comes before you, but on this you do have to keep servicing the lines.

Q. And that is the case on any long-distance call that it is necessary for the operator to open the circuit to see if they are still talking?

A. That is true.

Q. How about on local calls?

A. It is just the same.

Q. Well, on any conversation that goes through the board it is necessary for the operator to listen in to ascertain whether the conversation has been completed?

A. No, it isn't. You see, they simply throw a switch and say, "Are you busy?" That is all. They are not supposed to listen in at all. If a person is talking, why they will say, "Line busy," or "Yes, I am busy."

(Testimony of C. H. Glenn.)

Q. Well, they have to listen in to see whether the person says the line is busy or not?

A. No. Well yes. You do not have to listen to all the conversation going on. What I am telling is this: In servicing a board, Mr. Mouritsen, the operator is busy, see. They just throw a switch and say, "Are you busy," and shut the key off. If they say "Yes," they cut it off and if there is no reply they will pull the plug and that releases the line. [2882]

Q. And if the person who is making the conversation does not immediately say "Line busy," then it is necessary for them to hear if any conversation is taking place in order to determine whether the conversation has been terminated or not, is that correct?

A. Well, you can hear the sound, you know, just as quick as you open the key. You can hear the sound.

Trial Examiner Lindsay: Hear what sound?

The Witness: Any one talking; anything that is going on.

Trial Examiner Lindsay: By "sound," you mean voice?

The Witness: Voice, yes.

Q. (By Mr. Mouritsen) I will ask you, Mr. Glenn, if in the past you have received complaints regarding the fact that wires have become crossed, and conversation switched to different people for whom they were not intended?

(Testimony of C. H. Glenn.)

A. Well, I will tell you, we found that, and here is what happened: In the cables, those cables are held up by rings. First, there is a messenger and then your cable that is held up by rings. Now, these rings sometimes will wear the outer casing of the cable, which is lead, and when it does do that, if it wears through to where there is a contact with those wires that are inside—because the cable is just a mass of telephone wires, you understand—if the action of the wind will wear on the bottom part of that cable, on the casing, the [2883] outside casing, if that wears through there so that two of those wires come in contact with that ring, why, it will immediately cause a cross talk, and those are things that are the hardest things in the world to catch.

Trial Examiner Lindsay: Just a moment. Has it actually happened?

The Witness: Oh, yes. It happens right along. It happens—you have to change those rings right along.

Trial Examiner Lindsay: How long might that condition exist before you get it corrected?

The Witness: It depends entirely upon finding it.

Trial Examiner Lindsay: What is your experience on that?

The Witness: Well, we have had an experience where we have looked for it for some time.

Trial Examiner Lindsay: What do you mean by “some time?”

(Testimony of C. H. Glenn.)

The Witness: Oh, maybe a month at the longest. That is about the longest, because if you don't find it, then we cut the cable out.

Trial Examiner Lindsay: Then, during that whole month you would have that condition existing?

The Witness: You might have it to a more or less degree. Sometimes it is louder. It depends a great deal upon the action of the wind. If the wind is blowing, it is inclined to hold it in a position where that contact would be so, and when it lets it loose, why, it goes back. That is the difficulty in [2884] finding those things, because it goes on and it will go off.

Trial Examiner Lindsay: I am sorry to have interrupted you.

Q. (By Mr. Mouritsen) Well, now, has that condition that you described about the cables wearing occurred in the past year or two?

A. Yes, it has. We had a very bad one here a while ago.

Q. But you got that fixed up now, is that correct? A. Yes, sir.

Q. About when did you fix that last one?

A. We got it fixed up along—well, we found it about the first of the year.

Q. The first of January, 1939?

A. Yes.

Q. Now, did Mr. Crary ever complain to you about a defect of that kind?

(Testimony of C. H. Glenn.)

A. No, he didn't.

Q. Now, I will ask you, Mr. Glenn, if prior to the flood of 1938 you ever devoted much of your time to the running of the Telephone Exchange?

A. Well, I am a farmer. I am busy farming, because farming, of course, is my vocation.

Q. As a matter of fact——

Mr. Clark (Interrupting): Just a minute.

The Witness: Can I just explain one thing there? [2885]

Mr. Mouritsen: Surely.

The Witness: If I am not wrong in this, please? I would like to explain something in the running of the office, and that is this: I have always had a bookkeeper, a man that keeps the books, and Mrs. Dunn has been the operator, the head operator at the office. Mr. Woodruff has been the man on the outside. Each one of them had their place in the organization, and I just generally supervised the whole thing.

Trial Examiner Lindsay: Now, there is one question that hasn't been directly answered.

Prior to the flood, I believe the question was, in 1938, did you devote much of your time to the telephone service?

The Witness: Yes, I devoted some time to superintend it, to manage it. [2886-87]

Q. (By Mr. Mouritsen) Well, as a matter of fact, prior to that time, that is, the flood of 1938, didn't you pretty well leave the running of the exchange to Mrs. Dunn as head operator?

(Testimony of C. H. Glenn.)

A. The operators, but the business part to Mr. Holmblad who was keeping the books.

Q. Was Mr. Holmblad the bookkeeper to whom you refer? A. Yes, sir.

Q. What is his first name?

A. Emil, E-m-i-l.

Q. And the actual running of the exchange itself and the supervision of the other operators was left almost entirely to Mrs. Dunn, is that correct?

A. That is true.

Q. And how long had she done that—since you took over the exchange in, I believe you stated, 1926? A. That is correct.

Q. Does Mr. Holmblad still do your bookkeeping work? A. No, sir.

Q. When did he cease to do it?

A. Just about January 1st.

Q. Of 1939? A. Yes, sir.

Q. And you have somebody else doing that work?

A. Mr. Soderberg. [2888]

Mr. Mouritsen: That is all, Mr. Examiner, except I should like to call to the Examiner's mind the demeanor of Mr. Dunn on the stand who also testified regarding matters covered as well by Mr. Glenn.

Mr. Clark: Well I submit, Mr. Examiner, that that statement is improper in this record. It is meaningless. I suggest that if the Examiner's attention is going to be drawn to the demeanor of anyone that it be done off the record unless Mr. Mouritsen is going to tell us how Mr. Dunn acted on the stand.

(Testimony of C. H. Glenn.)

Trial Examiner Lindsay: In all practices, the court is fully aware of its rights in these matters.

Do you have any questions?

Mr. Clark: I move to strike out counsel's statement, Mr. Examiner.

Trial Examiner Lindsay: It may remain.

Mr. Clark: Nothing further from us. That is all, Mr. Glenn.

Trial Examiner Lindsay: Just a moment, Mr. Glenn.

Q. Have you ever had any complaints against any of your other operators? A. Yes, sir.

Q. And how long has that matter been in existence—I mean, the complaints about other operators?

A. We always have some complaints. [2889]

Q. In fact, in your business isn't it a fact that you have complaints against all operators during the whole course of your operation of your business?

A. We haven't had a complaint since the first of the year.

Q. Generally speaking, do you have complaints against all operators? A. Yes, sir.

Q. Have you ever had a year since you have been in business that you haven't had a complaint against your operators?

A. No, sir; no, sir.

Q. And have you ever had a year that you haven't had complaints against the service, generally speaking? A. Yes, I have.

Q. What?

(Testimony of C. H. Glenn.)

A. Yes, we have had complaints.

Q. How often did you have those complaints?

A. Well, it would be pretty hard to tell. We don't have many complaints about the service when we keep the lines up.

Q. How many times would you say in the last five years you have had complaints about your service, generally speaking?

Mr. Clark: The last how long?

Trial Examiner Lindsay: Five years.

Mr. Clark: Five years.

The Witness: That would be hard to answer, Mr. Referee. [2890]

Q. (By Trial Examiner Lindsay) In the last year?

A. Well, we haven't had so many in the last year.

Q. About how many would you say?

A. Maybe a dozen.

Q. Do you know if you had that many the year preceding last year?

Mr. Clark: May I have the Examiner indicate what is meant by "last year"? A year from now, or the year 1938?

Trial Examiner Lindsay: The year 1938.

The Witness: I would judge so. I don't think there has been much difference.

Q. (By Trial Examiner Lindsay) And in 1938 about how many complaints do you think you had against other operators?

(Testimony of C. H. Glenn.)

A. Well, I don't know. It would be a guess, Mr. Referee. I couldn't tell you.

Q. You have no recollection?

A. It is just pretty hard to tell.

Q. Now, did I understand you to testify that you called—at the time you talked with Mrs. Dunn I believe on the telephone on March 2nd—was that the day you had the telephone conversation?

A. I had both, on the first and on the second.

Q. Now, which one of those days did you tell Mrs. Dunn that you wouldn't let her know at that time whether or not she would return to work? [2891]

A. That was the 1st, March 1st.

Q. March 1st? A. Yes, sir. [2892]

Q. Now, did you tell her that on March 2nd?

A. No, on March 2nd I told her so, that I didn't want her to return.

Q. And what made you change your mind between March 1st and March 2nd?

A. Because she had left the office; on March 1st she had gone home and when I telephoned her, I told her I would let her know later, and then on the morning of the 2nd—during the night, I made up my mind that I would let her go.

Q. And you hadn't made up your mind in the middle of February to let her go, had you?

A. No, I hadn't.

Q. And at that time you had received those complaints you were talking about this morning?

(Testimony of C. H. Glenn.)

A. Yes, sir—no. Let's see, Mr. Referee. Just a moment.

Yes, I had them at that time.

Trial Examiner Lindsay: That is all.

Mr. Mouritsen: I have one question.

Q. Who, Mr. Glenn, if anyone, occupies the position of head operator formerly held by Mrs. Dunn?

The Witness: Mrs. Woodruff.

Mr. Mouritsen: That is all.

Mr. Clark: Mr. Glenn, can you tell us whether or not during the fall of 1938, that is, we will say, from the 1st of July to the end of the year, you received more complaints re- [2893] garding the service rendered by Mrs. Dunn than against that rendered by any of your other operators?

The Witness: Yes, we did.

Mr. Clark: That is all.

That is all, Mr. Glenn.

(Witness excused.)

Mr. Clark: Mr. Crary, please.

Mr. Wingrove will handle this witness, Mr. Examiner.

BLAKELY G. CRARY,

a witness called by and on behalf of the Respondent, Corcoran Telephone Exchange, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Wingrove) State your name, please, Mr. Crary?

A. My full name is Blakely G. Crary. The first name is B-l-a-k-e-l-y, and the last name is C-r-a-r-y.

Q. Where do you reside?

A. I reside in Corcoran.

Q. How long have you resided in Corcoran?

A. Since July, 1930.

Q. What is your occupation at the present time?

A. I am cashier of the First National Bank of Corcoran.

Q. How long have you held that position?

A. Since the bank was organized, July 21st, 1934.

Q. What position did you occupy prior to July, 1934? [2894]

A. Well, I was assistant cashier of the old bank, the old First National Bank of Corcoran, and then when it was closed, I was assistant conservator of the old bank.

Q. Do you know Mrs. Dunn?

A. Yes, I do.

Q. How long have you known her?

A. I should imagine ever since I have been in Corcoran, and been with the bank.

Q. Do you have telephone service in the bank?

(Testimony of Blakely G. Crary.)

A. Yes, we do. We have two trunk lines and four telephones in the bank.

Q. And do you have a telephone in your home?

A. Yes.

Q. Do you recognize Mrs. Dunn's voice over the telephone? A. Yes, I do.

Q. Will you kindly state as to whether or not during the two years immediately preceding about March 1st, 1939, you ever complained to Mr. Glenn of the Corcoran Telephone Exchange regarding the service rendered by Mrs. Dunn when she was on the switchboard?

A. Yes, I complained on several occasions.

Q. About how many times, if you can state?

A. I can't state definitely, but I would say—oh, a minimum of three, and a maximum of five times that I have complained to Mr. Glenn. [2895]

Mr. Mouritsen: May I have that answer read?

Trial Examiner Lindsay: Yes. Read the answer.

(The answer referred to was read by the reporter, as set forth above.)

Q. (By Mr. Wingrove) Did you have any conversation with Mr. Glenn regarding Mrs. Dunn in the month of January, 1939? A. Yes, I did.

Q. What time in January, to the best of your recollection?

A. I would say the first part of January.

Q. Where did this conversation take place.

A. I believe it took place in his office.

(Testimony of Blakely G. Crary.)

Q. Who, if anyone, was present, besides yourself and Mr. Glenn?

A. I don't know. There are other people in his office—I do not recall whether there was anyone else present in the office or not.

Q. Will you kindly state the substance of the conversation that you had with Mr. Glenn at that time? A. Yes.

I told Mr. Glenn that I had attended a dinner a short time prior to that—I do not remember whether the night before or a few nights previous—and the subject of the poor service of the Telephone Exchange was discussed; and one member of the party stated that they intended to complain to the Railroad Commission unless the service was improved. [2896]

Q. What reply, if any, did Mr. Glenn make to that statement?

A. I told him that it was passed on in a friendly manner, and he thanked me for passing on the information.

Mr. Wingrove: You may examine.

May I ask one more question, please?

Trial Examiner Lindsay: Yes.

Q. (By Mr. Wingrove) Was Mrs. Dunn's name mentioned in this conversation that you just testified to?

A. Yes, it was. She was the only subject of the complaint.

Q. Did you ever have—did you ever register any

(Testimony of Blakely G. Crary.)

complaints with Mr. Glenn during the two year period immediately prior to March 1st, 1939, regarding any of the other operators besides Mrs. Dunn?

A. No, we never had any trouble with any of the other operators.

Mr. Mouritsen: I move to strike that as not responsive.

Trial Examiner Lindsay: All but "no," must go out.

Q. (By Mr. Wingrove) Did you ever have any trouble with any of the other operators during that period of time? A. No.

Mr. Wingrove: You may examine.

Cross Examination

Q. (By Mr. McTernan) Now, Mr. Crary, you have just testified that you were present at a gathering where a group of men were talking about the—complaining about the service of the [2897] Telephone Exchange and one of these men said that he would complain to the Railroad Commission unless something was done about it.

Could you tell us who that was?

A. I am sorry. I can't. I don't remember who that was.

Q. Can you tell us the names of any of the men in that group?

A. No, I can't definitely. I am not sure exactly who was there.

Q. Can you name any of them at all?

(Testimony of Blakely G. Crary.)

A. Not with any certainty, except possibly my wife.

Q. And when did this gathering occur?

A. I would say—well, sometime around the first of January, 1939.

Mr. McTernan: That is all.

Mr. Wingrove: No further questions.

Trial Examiner Lindsay: I have just one or two questions.

Q. About how many times a day do you use the telephone?

A. Numerous times during the day I have occasion to use it. I couldn't tell you exactly the number of times.

Q. Do you have any estimate as to how many times you talk on the phone?

A. I would say—oh, I don't know. Twenty or thirty times a day, something like that.

Q. And that would be the average each day, would it not, that is, along that order? [2898]

A. That is only a guess. I couldn't be absolutely certain. It would vary from day to day, but I know I use the phone a great deal.

Q. And you never had any complaints to make against anyone except Mrs. Dunn?

A. No, I didn't. I never did complain.

Mr. McTernan: May we ask some more questions, please?

Trial Examiner Lindsay: Yes.

Q. (By Mr. McTernan) Do you know whether

(Testimony of Blakely G. Crary.)

Mrs. Dunn was on the—on duty most of the time during the day, or most of every day?

A. Mrs. Dunn was on duty part of the time when I used the phone. There were other operators that I——

Q. (Interrupting) Wasn't she the day operator?

A. She—I don't know whether she was the day or night operator. I know I recognized her voice when she was on.

Q. Well, then, couldn't you tell me then, whether she wasn't on most of the time during the day?

A. I found her on the daytime, and I believe also in the evening.

Q. Didn't you usually find her on in the daytime?

A. I wasn't—I wouldn't say usually, no.

Mr. McTernan: That is all.

Mr. Wingrove: No further questions.

Trial Examiner Lindsay: That is all. [2899]

Mr. Wingrove: That is all, Mr. Crary. Thank you.

(Witness excused.)

Mr. Wingrove: I call Mr. Woodruff, please.

JAMES WILLIAM WOODRUFF

a witness called by and on behalf of the Respondent, Corcoran Telephone Exchange, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Wingrove) Will you state your full name, please?

A. James William Woodruff.

Q. Where do you reside, Mr. Woodruff?

A. Corcoran.

Q. Where? A. Corcoran.

Q. How long have you resided in Corcoran?

A. Ever since '24.

Q. 1924? A. That is right.

Q. Are you employed by the Corcoran Telephone Exchange? A. I am, yes, sir.

Q. How long have you been employed by the Exchange? A. Ever since July, '27.

Q. What position do you occupy with the Exchange? A. Lineman.

Q. Have you held that position ever since you have been first [2900] employed?

A. Yes, sir.

Q. Do you know Mrs. Dunn?

A. Yes, sir.

Q. How long have you known her?

A. She was there when I went to work—well, I had occasion—in 19—just a moment.

In 1924, I worked for the Corcoran Electric Company and laid down the service work there, and I had occasion to know her then in 1924.

(Testimony of James William Woodruff.)

Q. Now, do your duties require that you go in and out of the office every day?

A. Yes, sir. [2901]

Q. About how many times a day are you in and out of the office?

A. It all depends on what I have to do. If sometimes I leave at 8:00 o'clock in the morning, it would probably be 1:00 before I come back, maybe I would not be in before 5:00 that afternoon.

Q. Are there ever times when you spend the major portion of the day in the office?

A. If we were repairing the switchboard, or something like that, I would be there most of the day.

Mr. Mouritsen: May I have that answer? I didn't hear it at all.

(The answer referred to was read by the reporter, as set forth above.)

Q. (By Mr. Wingrove) Did you observe as to whether or not Mrs. Dunn kept a bottle of wine in the telephone office?

Mr. Mouritsen: Objected to as ambiguous in that "kept" has the connotation of a continuous act, and I object to that on that ground.

Trial Examiner Lindsay: Sustained. You may reframe your question.

Q: (By Mr. Wingrove) During the year and a half period immediately preceding March 1, 1939, did you ever see any wine about the premises in the telephone office?

(Testimony of James William Woodruff.)

A. One morning I was working in the rear of the office and [2902] I came out and there was a bottle sitting on the icebox. Mr. Glenn—it so happened I met him at the door—and he asked me, he says, “Whose is that?”

And I says, “I don’t know. I guess it is Mrs. Dunn’s.”

There was a glass sitting by it. He walked on, and I asked Mrs. Dunn why she left it there, that Mr. Glenn asked me about it, and there was nothing I could do but say what I did.

Q. You say you asked Mrs. Dunn if she left it there?

A. Yes.

Q. What did she say?

A. She said she forgot to put it away.

Mr. Wingrove: May I have that last question and answer?

Trial Examiner Lindsay: Yes.

(The record referred to was read by the reporter, as set forth above.)

Mr. Mouritsen: May I have the record read back before that? I couldn’t hear it.

(The record referred to was read by the reporter, as set forth above.)

Q. (By Mr. Wingrove) Can you fix the date of this conversation for us, Mr. Woodruff?

A. No, I can’t.

Q. Approximately?

A. I don’t remember just what day. I wouldn’t know, because [2903] I didn’t pay any attention.

(Testimony of James William Woodruff.)

Q. Can you estimate about how long before March 1st, 1939?

A. I wouldn't say definitely, because I wouldn't say definitely what date it was. It was last year some time.

Q. 1938? A. Yes, sir; 1938.

Q. And who else, if anyone, was present when you spoke to Mrs. Dunn?

A. No one, no one.

Q. Now, you say you saw a bottle there? Do you know what was in that bottle?

A. Well, it was marked "Port Wine." That was on it.

Q. Now, after that did you ever see a bottle of wine back near the icebox?

A. Well, there was empty bottles in the icebox but I couldn't say who that belonged to.

Q. Did you ever see any bottles of wine in the operating room?

A. There was only time, I guess.

Q. When was that?

A. That was since—it was last year. She had been to Hanford to see a doctor and come back and underneath the counter there was part of a bottle. She said the doctor prescribed that for her, she was using it for nourishment; she couldn't eat any food at all, that is the only thing [2904] she had for nourishment.

Q. Now, where did this conversation take place, Mr. Woodruff?

A. That was at the office.

(Testimony of James William Woodruff.)

Q. In the operating room?

A. In the operating room.

Q. And who else, if anyone, was present besides yourself——

A. (Interrupting) Nobody.

Q. (Continuing) —and Mrs. Dunn?

A. Nobody.

Mr. Mouritsen: May I have that definitely cleared up? The witness has been referring to “she” did so and so.

The Witness: Mrs. Dunn.

Q. (By Mr. Wingrove) Did you ever see Mrs. Dunn drink any wine while she was on duty in the operating room? A. No, sir.

Q. Did you ever see any wine in a glass about the operating room?

A. Not that I recall.

Q. Did you ever smell the odor of wine on Mrs. Dunn’s breath?

Mr. Mouritsen: That is objected to as incompetent, irrevelant and immaterial unless it is fixed in some way. It is vague and indefinite.

Mr. Wingrove: I mean while she was on duty in the office. [2905]

Trial Examiner Lindsay: He may answer.

Q. (By Mr. Wingrove) If you understand the question? A. Yes.

Trial Examiner Lindsay: Well now, what do you mean by “yes”? You understand the question.

The Witness: Yes.

(Testimony of James William Woodruff.)

Trial Examiner Lindsay: All right. Answer the question.

The Witness: I did.

Trial Examiner Lindsay: Just a moment.

Mr. Wingrove: May I have it read back, Mr. Examiner?

Trial Examiner Lindsay: Mr. Witness, now just a minute. Probably the record is clear and I am not sure. The question, the last question put to you by Mr. Wingrove was, "Do you understand the question," and you said "Yes."

Now, when you said "Yes," what did you mean?

The Witness: That I did.

Trial Examiner Lindsay: That you did what?

The Witness: Smelt liquor on her breath.

Q. (By Mr. Wingrove) Was this more than once?

A. I don't think so; once or twice, something like that. I wasn't around the office very much, in and out.

Q. Did you ever smell the odor of liquor in the office itself? A. I don't think so. [2906]

Q. Did you have a conversation with Mr. Glenn during the month of February, 1939, relative to Mrs. Dunn? A. (Pause)

Q. Relative to Mrs. Woodruff?

Mr. Mouritsen: I object to that upon the ground it is a double question, either one or the other.

Q. (By Mr. Wingrove) Relative to Mrs. Dunn?

(Testimony of James William Woodruff.)

A. I don't recall if I had one with regard to her.

Q. Did you have a conversation with Mr. Glenn at any time during the month of February relative to Mrs. Woodruff? A. Well——

Q. (Interrupting) Just answer yes or no, please. A. Yes.

Q. Where did the conversation take place?

A. In his office, the lower office.

Q. What do you mean——

A. (Interrupting) At the bank.

Q. In the bank building? A. Yes.

Q. And when was it? About what time of the month?

A. I can't tell you just exactly the date. I can't recall the date it was.

Q. Was it the early part of the month or the latter part of the month? [2907]

A. Well, it was in the latter part of the month.

Q. And who else if anyone was present besides yourself and Mr. Glenn? A. No one.

Q. Will you kindly state the substance of the conversation that you had with Mr. Glenn and which he had with you at that time?

A. Well, I went to the office that morning to work. I had some trouble tags to clear those up——

Mr. Mouritsen (Interrupting): This is preliminary. Let us have the witness give the conversation that he is asked to give.

Trial Examiner Lindsay: Yes.

(Testimony of James William Woodruff.)

Q. (By Mr. Wingrove) Just state the conversation, what you told Mr. Glenn and what he told you.

A. I had three trouble tags I had to take care of and I went to the office. My wife was——

Mr. Mouritsen (Interrupting): I will object to this as——

Q. (By Mr. Wingrove) Is this what you told Mr. Glenn?

A. Yes, sir. I went to the office. I hadn't been there—my wife was crying. I asked her what was the matter. She said her and Mrs. Dunn had a misunderstanding, so I just went down to the office and asked Mr. Glenn, "My wife and Mrs. Dunn had a misunderstanding. I wish you would investigate and [2908] if my wife is in the wrong, discharge her."

Mr. Wingrove: You may examine.

Cross Examination

Q. (By Mr. McTernan) You are the husband of Mrs. Woodruff who is a telephone operator at the exchange, are you not?

A. Yes, sir, I am.

Q. Isn't it true that your wife took over the job as head operator when Mrs. Dunn was discharged?

A. Well—I presume so. She has been working there.

Q. Pardon?

A. She has been working there for a number of years.

(Testimony of James William Woodruff.)

Q. How long?

A. Well this time I think three years; this time.

Q. Now, I believe you testified on your direct examination that one morning some time ago you saw a bottle of port wine sitting on top of the refrigerator or ice box in the rear of the exchange.

A. Yes.

Q. Now, how long ago was that?

A. That was last year. I can't tell you the exact date.

Q. What part of last year?

A. Well, I presume June or July, something like that. I can't say definite.

Q. What kind of a bottle was it?

A. Black port. [2909]

Q. Pardon?

A. Black port; pint bottle.

Q. A pint bottle? A. Yes.

Q. Full? A. No.

Q. Was it full? A. No.

Q. You didn't know to whom it belonged when you saw it there, did you? A. No.

Q. Did you take a drink out of it?

A. No.

Q. Did you ever take a drink of port?

A. Yes, sir.

A. On numerous occasions?

A. How is that?

Q. On many occasions?

A. Not too many occasions.

(Testimony of James William Woodruff.)

Q. Well now, can't you be more definite than that?

Mr. Clark: I object, Mr. Examiner. The question is incompetent, irrelevant and immaterial and has nothing whatsoever to do with the case, whether he took a drink of port himself or whether he didn't.

Mr. McTernan: Mr. Examiner, it has been—I will restrict [2910] that question to taking a drink of port during working hours or just before working hours.

The Witness: I have taken a drink during working hours.

Q. (By Mr. McTernan) You have taken it during working hours? A. Yes.

Q. On more than one occasion?

A. Well, I have over a period of years, yes. I don't drink but very little.

Q. You are still working at the Exchange, are you not?

A. I am still there, yes.

Q. Anybody else around the Exchange ever take a drink of port during working hours?

A. I don't know. [2911]

Q. Now, at this time you testified you saw a bottle of Port in the operating room. Can you fix that time for us, when that was?

A. I can't definitely, no.

Q. Have you any idea?

A. Well, I couldn't state definitely what time

(Testimony of James William Woodruff.)

it was. I couldn't say whether it was one month or another. I never paid no particular attention to the time.

Q. I don't mean what time of day it was.

A. I mean the day of the month.

Q. How long ago was it with reference to today?

A. I don't know; maybe August, maybe September.

Q. Of what year? A. Last year.

Q. Last year.

You say that bottle was in a bag?

A. Sitting up underneath the counter.

Mr. McTernan: That is all.

Mr. Wingrove: Just a moment, Mr. Woodruff, please.

Redirect Examination

Q. (By Mr. Wingrove) You testified on cross examination, I believe, that your wife had been employed at the Telephone Exchange three years this last time?

A. Three or four. I wouldn't say definite how many years.

Q. Had she worked for the Exchange prior to the last three [2912] year period?

A. Yes.

Q. When was that?

A. '27, I believe; '26 or '27.

Q. And how long did she work for the Telephone Company at that time?

(Testimony of James William Woodruff.)

A. I can't tell you exactly. I think it was either three or four years, maybe longer.

Q. Now, you testified on cross examination that when you saw this bottle of wine back, I believe, on the ice box, you didn't know who it belonged to, correct?

A. No, I couldn't say definitely right at that time who it belonged to.

Q. Did you later find out who it belonged to?

A. Not until I talked to Mrs. Dunn. She said it was hers.

Mr. Wingrove: No further questions.

Mr. Mouritsen: That is all.

Trial Examiner Lindsay: I have just one or two.

Q. (By Trial Examiner Lindsay) Did you ever see Mrs. Dunn take a drink while she was on duty?

A. At times.

Q. Did you ever see her actually drink?

A. Yes, that particular morning. She had been to the doctor and she hadn't had nothing to eat for a couple of days, couldn't have solid food on her stomach, and she said that was the [2913] doctor's prescription; prescribed by the doctor.

Q. Well, what did you think about that at that time? A. I didn't—

Mr. Clark (Interrupting) May I have that question?

(The record referred to was read by the reporter, as set forth above.)

(Testimony of James William Woodruff.)

Mr. Clark: I object to that on the ground it is incompetent, irrelevant and immaterial, and calls for a conclusion of the witness.

Trial Examiner Lindsay: I would like to know whether he made a complaint about it or not. That is all I am talking about.

Mr. Clark: I will still submit the objection, Mr. Examiner.

Trial Examiner Lindsay: All right.

Q. Did you make any complaint?

A. I did not. It wasn't any of my business.

Q. And how many times have you taken a drink while you were on the job?

A. If I happened to be down town—not too many times—when you have to climb a pole, you let it alone or you don't do it very long.

Q. What kind of a drink did you take while you were on duty?

Mr. Clark: Objected to that on the ground it is incompetent, irrelevant and immaterial, Mr. Examiner. This man has testified [2914] that he wasn't discharged.

Trial Examiner Lindsay: He may answer.

Mr. Clark: His job isn't comparable to this woman's.

Trial Examiner Lindsay: He may answer.

The Witness: How many?

Q. (By Trial Examiner Lindsay) What kind of a drink did you take while you were on duty?

A. Well, if it is winter, sometimes I take a glass of Port.

Trial Examiner Lindsay That is all.

(Witness excused.)

Mr. Clark: The Respondents rest, Mr. Examiner.

I would like to make a couple of motions to strike, for the record. I think if it is time for the afternoon recess, Mr. Examiner, perhaps we can save time by taking it, and I could locate the testimony I wish to move to strike.

Trial Examiner Lindsay: All right. Will ten minutes be long enough?

Mr. Clark: Yes, indeed.

Trial Examiner Lindsay: A ten minute recess.

(At this point a short recess was taken, after which proceedings were resumed as follows:)

Trial Examiner Lindsay: Hearing called to order.

Now, the Official Reporter—one of them—has just informed me that you gentlemen have some corrections as to mis-spelled names, words, and so forth in the record. I suggest [2915] that counsel for the various parties and the Board get together and agree upon those questions, if you can, and then the stipulation of the corrected list of corrections be sent to the official court reporters, and he will make them a part of the record.

Now, if there is any other suggestion that counsel have regarding that, I am willing to hear it.

[2916]

Mr. Clark: Mr. Examiner, Mr. McTernan and Mr. Painter of my office are outside now trying to get together on these corrections. They tell us it will take them another half an hour.

We have some other matters to attend to here. There is another exhibit which Mr. Mouritsen wishes to offer in behalf of the Board which might entail some discussion, so I suggest that after we get through with everything that we can accomplish here that very probably the hearing should be kept open until we find out whether Mr. McTernan and Mr. Painter can agree on these corrections, and if there are any of them that they can't agree on, it may be necessary for us, of course, to make a further showing.

That only involves a delay of some half an hour or forty-five minutes.

Trial Examiner Lindsay: I assure you the hearing will not be closed until I am sure everything is correct.

Mr. Clark: Now, in connection with the close of the respondents' case, Mr. Examiner, I at this time move to strike from the record all of the testimony appearing at page 2283, line 8, to page 2286, line 6, the motion in that respect being made in behalf of all respondents, upon the ground that the statements referred to in this testimony are hearsay as to all respondents and not binding upon any of them in that there has been no connection in this case between [2917] Mr. Harry Lee Martin,

to whom the statements are attributed in the testimony, and any of the respondents.

And in that connection I will call your Honor's attention to the fact that this testimony is that of Mr. Botts while on the stand concerning what statements were made by a Mr. Harry Lee Martin at the barbecue of January 30th of this year. And in that connection your Honor will also undoubtedly remember that Mr. Mouritsen promised to connect it up, and that he would consent to a motion to strike unless it was connected.

Now, I suggest that a ruling be reserved on that until the exhibit is offered in rebuttal which counsel relies upon to establish that connection.

Also, for the record——

Trial Examiner Lindsay (Interrupting): Well, I will reserve the ruling, but not on the basis of your statement.

Mr. Clark: Very well.

Also, for the record, Mr. Examiner, we move to strike at this time on behalf of the respondent Corcoran Telephone Exchange all of the testimony adduced on behalf of the Board purportedly in support of the complaint against the Corcoran Telephone Exchange upon the ground that the Board has no jurisdiction over that business or corporation in that it has not been shown that it is engaged in interstate commerce, nor that the conduct of the business in any manner affects inter-[2918] state commerce; and upon the further

ground that there has been no showing in this case that Mrs. Dunn is a person who ever joined a labor organization or assisted one or in any manner attempted to assist one and that, therefore, she is not a person to whom the rights referred to in the Section 7 of the National Labor Relations Act are secured by that statute; and I refer particularly in that connection to Section 7 of the Act and Section 8(1).

Trial Examiner Lindsay: Do you wish to make any reply?

Mr. Mouritsen: Mr. Examiner, only in this respect: That the particular sections under which—upon which the complaint in this matter is based are not only Section 7 and Section 8(1), but Sections 8(3) and 8(4) of the Act.

Trial Examiner Lindsay: Well, I will take that under advisement.

Mr. Clark: Very well. That completes the respondents' showing.

Mr. Mouritsen: Mr. Clark, will it be stipulated that if Mr. Sayre, S-a-y-r-e, circulation manager of the Fresno Bee, were called, that he would testify that the paper of which Board's Exhibit 29 for identification is a part was circulated in Corcoran and vicinity on January 30, 1939?

Mr. Clark: So stipulated.

Mr. Mouritsen: At this time, Mr. Examiner, I offer as Board's Exhibit 29 the document——

[2919]

Mr. Clark (Interrupting): Now, may I just

add one thing to that? The condition of that stipulation, of course, Mr. Mouritsen, is the reciprocal one we discussed concerning some blurred language on that page which the photostat hasn't caught clearly?

Mr. Mouritsen: Yes.

Mr. Clark: Very well.

Mr. Mouritsen: I will offer as Board's Exhibit No. 29 the document that has been marked Board's Exhibit 29 for identification, and I restrict my offer, Mr. Examiner, to that article appearing in Board's 29 for identification which is headed "Farm Group Plans Kings Drive." [2920]

Mr. Clark: To which we object, Mr. Examiner, on the ground it is hearsay, not binding on any of the Respondents in this proceeding in that there has been no connection shown whatsoever between the publication of that article and any of the Respondents, and particularly the Associated Farmers of Kings County, the point being unless there is a connection shown between the persons responsible for the publication of the article and the article, why, I submit that no one can be bound by it. A newspaper can publish anything.

Trial Examiner Lindsay: Board's Exhibit 29 is received in evidence.

(Thereupon, the document above referred to was received in evidence and marked as Board's Exhibit No. 29.)

Mr. Clark: Now, the reciprocal stipulation that I referred to a moment ago is this, Mr. Examiner:

While it is true that the photostat to which I stipulated the other day as being a correct copy of this page of the paper correctly sets forth the article offered, there is a further article on the left-hand column of this page of the paper which is not wholly copied in the photostat. In other words, the edge of the paper is curled up, and Mr. Mouritsen is willing to stipulate with me that a part of this article in the left-hand column on this page reads as follows, simply in connection with my agreement that this is a correct photostatic copy, and not in any manner offering it in evidence:

[2921]

Mr. Mouritsen (Interrupting): Before that is offered, I will object to the reading into the record of anything on this page except the article to which I specifically restricted my offer.

Mr. Clark: Just a minute. I am not reading this into the record. We are only trying to get in the record what this paragraph says in connection with the former stipulation.

Trial Examiner Lindsay: Off the record a moment.

(Discussion outside the record.)

Trial Examiner Lindsay: On the record.

Let the record show that Mr. Clark may read into the record that stipulated part of Board's Exhibit 29, and the part which he is reading in the record is in no way a part of the record and not to be considered; and that the stipulation so

entered into by and between Mr. Mouritsen and Mr. Clark is not binding upon me.

Mr. Clark: Right, and that I haven't offered this portion of the paper in evidence, and that Mr. Mouritsen is objecting to its being considered in evidence, but he is agreeable with me that the document reads as follows:

Correct?

Mr. Mouritsen: And by the stipulation, I do not waive my objection to the reading into the record or a consideration of that article as part of the Exhibit.

Mr. Clark: Certainly. We understand that.

[2922]

Here is how it reads: "J. B. Boyett"—it is in the article on the left-hand column of the paper which is entitled "Union Pickets Quit as Farmer Group Assembles," and the part I am interested in having clearly appear is as follows:

"J. B. Boyett, president of the Kings County Associated Farmers, denied that organization sponsored the farmers' action, though he admitted some of the farmers who took part belong to the organization."

Do you have any further rebuttal?

Mr. Mouritsen: Nothing further.

Mr. Clark: I would like to call one witness, Mr. Examiner, restricted only to this publication which now has just come in evidence.

Trial Examiner Lindsay: All right.

Mr. Clark: Mr. Botts.

HAROLD E. BOTTS

recalled to the stand by and on behalf of the Respondent, Associated Farmers of Kings County, Inc., in surrebuttal, having been previously duly sworn, was further examined and testified as follows:

Direct Examination

Q. (By Mr. Clark) Mr. Botts, I show you again a photostatic copy of a page from the Fresno Bee dated Monday evening, January 30th, 1939, which has been admitted as Board's Exhibit 29.
[2923]

Mr. Mouritsen: Twenty-nine.

Trial Examiner Lindsay: That is right.

Q. (By Mr. Clark): In this case, and I direct your attention particularly to a small article in the 6th column on the left-hand side of this page entitled "Farm Group Plans Kings Drive."

I will ask you, Mr. Botts, whether on any occasion whatsoever prior to the time you testified—first testified in this proceeding you had seen that article?

A. (Examining document): I never saw this article until shown to me by Mr. Mouritsen on the stand.

Q. And was that while you were on the stand in this proceeding? A. Yes, sir.

Mr. Clark: That is all. [2924]

Cross Examination

Q. (By Mr. Mouritsen): Are you certain of

(Testimony of Harold E. Botts.)

that statement, Mr. Botts? A. Absolutely.

Q. Now, as a matter of fact didn't Mr. Painter show you that article on Sunday or Saturday prior to the time I showed it to you on Monday on the stand? A. No, sir.

Q. You are positive of that?

A. I never saw that article in the Fresno Bee, or a photostat of it, until presented by you to me.

Q. Now, my question is not whether you saw the photostat of it.

Didn't you see that article on Saturday or Sunday before I showed it to you on Monday, the last time you were on the stand?

A. I never saw the article. I knew the contents of it.

Q. Didn't you see a copy of that made by Mr. Painter before I showed you the photostat on the stand?

A. (Nodding head affirmatively.)

Mr. Clark: The question is whether he saw the article.

The Witness: I saw the copy made by Mr. Painter in Fresno.

Mr. Mouritsen: That is all. [2925]

Redirect Examination

Q. (By Mr. Clark) In other words, Mr. Botts, am I correct in stating that on the Sunday prior to the Monday upon which you testified in this case you saw—there was shown to you by Mr. Painter of my office simply a longhand copy of what he told you was in this paper? A. That is correct.

(Testimony of Harold E. Botts.)

Q. Now, prior to that time had you any knowledge whatsoever of that article appearing in the Fresno Bee?

A. I had no knowledge, and I had never seen it.

Mr. Clark: Very well. That is all.

Mr. Mouritsen: Nothing further.

Trial Examiner Lindsay: That is all.

(Witness excused.)

Mr. Clark: That is all, Mr. Examiner, entirely, except this stipulation out here.

Trial Examiner Lindsay: Yes, I understand.

Well, let it be understood that counsel for the respondent and counsel for the Board if they so desire are entitled to an oral argument before the Trial Examiner, not of record, and that any time within ten days from the receipt of the Trial Examiner's intermediate report, any aggrieved party may make application to the National Labor Relations Board in the Shoreham Building at Washington, D. C., for the privilege [2926] of oral argument before the Board, and exceptions may be filed with the National Labor Relations Board to the intermediate report.

The parties are also entitled to file briefs with the Trial Examiner within a period of ten days from the date of the receipt of the intermediate report, and in sending in that brief, send four copies.

Now, the brief may be sent, if such is sent, to me at Washington, D. C., and if I am not there, it will be forwarded to me for consideration.

Now, on the question of oral argument, if you wish to waive that, of course, that is your privilege, and except for the correction of the record, for which we will hold the hearing open for a short period, that is all.

Mr. Clark: I will state for the record, Mr. Examiner, we don't wish to argue the matter at this time on behalf of the respondents.

Mr. Mouritsen: Nor do we on behalf of the Board, Mr. Examiner.

Mr. Clark: That, however, is not intended to in any way affect our right to apply to the Commission to argue it before the Board in Washington.

Trial Examiner Lindsay: No. I so stated that you may file a petition with the Board for oral argument there, but naturally that comes after the intermediate report is served. [2927]

Mr. Clark: Yes, I understand.

Trial Examiner Lindsay: Now, we will take a short recess.

(At this point a short recess was taken, after which the hearing proceeded as follows:)

Trial Examiner Lindsay: Hearing called to order.

Mr. Painter: Mr. Examiner, I would like to call your attention to a portion of the record at page 2210, at line 6, which I believe is an error. However,

to explain the context, I will read back a few lines so you can see what we are talking about. This occurred in the testimony of Mr. Bell relating to this meeting with Mr. Slaybough on the Guernsey Road.

Here is the way it is reported:

“Q. What, in substance, was said?

“A. When Brice drove back it was raining and he left his window of his car down a little bit. He looked in. He said, ‘Hellow, there.’

“We talked. ‘I thought maybe you fellows out here was kind of watching the corners. You had quite a time down there this morning.’”

Now it is my recollection that he said, “They had quite a time down there this morning” instead of “You had quite a time down there this morning.”

You will perhaps recall that the answer was read back [2928] at the request of Mr. Mouritsen and that was still my recollection from having it read back.

Now if there is any question about it, I would like to have the reporter check his notes on that portion of the transcript.

I don’t know what the recollection of the attorneys for the Board is.

Mr. Mouritsen: Our recollection is that it is as reported in the transcript.

Trial Examiner Lindsay: And that was my recollection, but whatever the original notes of the official court reporter show will stand.

Mr. Painter: I am not sure, Mr. Examiner,

whether this matter was called to your attention or not. It is on page 2392 of the transcript, line 8. I will read the question which starts back at line 3.

“Then do I understand that after Mr. Riley, from what you had said, made the arrangements to have it brought down here and to pay for it himself, or rather to have it charged to his account, that the Association then paid for it with that check, which is Board’s Exhibit 31.

“A. After it was offered to him on the basis of that.”

Now it is my understanding and my recollection that it was after it was offered to them on the basis of that. It seems to me that was brought to your attention. [2929]

Mr. Mouritsen: That was discussed before.

Trial Examiner Lindsay: And it was corrected as it now is.

Mr. Painter: If the reporter has not already checked his notes, I would like to request that a check of the notes be made on that point, too. [2930]

Then there was another matter at page 24—

(Discussion outside the record.)

Mr. Painter: Then there is another piece of testimony that I would like to call to your Honor’s attention at page 2450, line 22. This matter was called to your Honor’s attention at the commencement of the hearing, I think, two days ago, and no agreement was reached except that the reporter would check his notes on this, and it has never been

taken up since. It related to the testimony of Mr. Louie Robinson regarding Al Chestnut who was employed by the Reclamation District.

If that hasn't been checked, I would like to have it checked. It was our contention that the word "them" was used in that line instead of "him."

Now, there was one further one that was not agreed upon. That is at page 2476 at line 16. This is in the testimony of Mr. Louie Robinson and it is in reference to Board's Exhibit 24.

Commencing at line 15, it is reported as follows:

"When did you write the letter of Board's Exhibit 24?

"A. To the best of my recollection right after the noon of November 18th."

It is my recollection, and Mr. Clark's recollection, that whatever was said, it wasn't "Right after the noon," as is shown by the context of the following questions and answers. [2931]

I just want to call that to the Examiner's attention, and it may be he will have some recollection on it himself.

"Q. When was it? After lunch?

"A. I do not believe I could fix it more definitely. I would say my best recollection is about the middle of the afternoon.

"Q. What would that be, about 2:00 or 3:00 o'clock?

"A. About 2:00 or 3:00 o'clock."

As near as I can reconstruct what was actually said was, "To the best of my recollection in the

afternoon of November 18th," and then I definitely recall Mr. Mouritsen asking him for more specific time, at which time he placed it as about the middle of the afternoon.

Trial Examiner Lindsay: Well, the official court reporter may check his notes, and if his notes *and if his notes* show that the answer was given as it is in the record, it may remain.

Mr. Painter: As to the other corrections, we agree on quite a list of them, and if it is satisfactory with your Honor, we will give that list to the reporter. This is the stipulated list of corrections. I think it will save time, rather than going through them all at this time.

There is also one other matter to take up, and that is getting the photostatic copies of certain sheets from Board's Exhibit 3. We have a list here which I think includes all that [2932] we want, and all that has been requested by the Board's attorneys. It is my understanding that that will be given to the reporter, who will have photostatic copies made.

Mr. Mouritsen: We will check the list, Mr. Painter, and if there are any additional ones, we will make them and it will be an agreed list that is furnished to the reporter.

Trial Examiner Lindsay: The reporters are instructed to have the photostatic copies made of those particular sheets, and they will then become a part of the record, and Board's Exhibit 3, the original, may be returned to the Respondent, Boswell Company, by the reporters, after the photostatic copies have been substituted for the original.

Now, the list of corrections which has been stipulated upon, may be turned over to the reporter, and he may make them a part of the record.

(At this point, the stipulated list of corrections was read into the record, as follows:) [2933]

Page 4, Line 5, change "December" to "November."

Page 34, Line 15, add "Dunn" after Margaret A."

Page 35, Line 21, change "Where" to "Were."

Page 35, Line 24, change "original" to "regional."

Page 66, Line 4, change "on" to "in."

Page 80, Line 9, change "H. M." to "H. N."

Page 106, Line 5, change "charger" to "charter."

Page 113, Line 7, change "witness" to "local" immediately preceding the word "operated."

Page 155, Line 20, change "Frank's boy" to "Fat Boy."

Page 157, Line 8, change "that" to "of an."

Page 169, Line 22, change "Geddes" to "Gettys."

Page 213, Line 4, change "with me" to "with it."

Page 218, Line 1, change "gotten" to "cotton."

Page 218, Line 7, change "Geddes" to "Gettys."

Page 247, Line 1, change "something" to "such things."

Page 250, Line 12, change "ordered" to "accommodated."

Page 305, Line 23, change by omitting the word "seed."

Page 321, Line 3, change "had had" to "he had."

Page 323, Line 21, change "card" to "car."

Page 344, Line 8, insert "ask" after "likewise."

Page 372, Line 25, change "Boswell" to "Robinson."

Page 375, Line 24, omit "that" before "the."

Page 376, Line 15, omit "you" after word "that."

Page 392, Line 21, change "charged" to "chartered." [2934]

Page 394, Line 13, change "charged" to "chartered."

Page 397, Line 11, change "invocations" to "invitations."

Page 400, Line 4, change "now" to "not."

Page 411, Line 8, change "admission" to "objection."

Page 413, Line 21, change "trade" to "pay."

Page 571, Line 22, change "gind" to "gins."

Page 644, Line 14, add "but" after "all."

Page 589, Line 18, change "May" to "November."

Page 570, Line 20, change "Nice" to "night."

Page 648, Line 4, change "discussion" to "discussing."

Page 677, Line 12, change "Marrked" to "married."

Page 689, Line 19, change "direct" to "directed."

Page 697, Line 3, change "receiving" to "receive."

Page 713, Line 20, change "6th" to "13th."

Page 773, Line 8, change "state" to "take."

Page 776, Line 10, change "which" to "with."

Page 787, Line 25, change "5th" to "1st."

Page 792, Line 15, change "is" to "has."

Page 792, Line 19, change "20th" to "12th."

Page 846, Line 25, change "discharged" to "dismissed."

Page 898, Line 9, change "a permit" to "the plant."

Page 899, Line 11, add "off" after "laid."

Page 940, Line 25, change "1937 to 1938" to "1938 to 1939."

Page 980, Line 4, change "morning" to "moment."

Page 1033, Line 1, change "November" to "December." [2935]

Page 1128, Line 1, change "Lorin" to "Lawrence."

Page 1137, Line 4, change "effect" to "defect."

Page 1140, Line 10, change "Farr" to "Prior."

Page 1140, Line 14, change "Martin" to "Robinson."

Page 1192, Line 21, change "manager" to "man."

Page 1292, Line 11, change "account of" to "the ground."

Page 1392, Line 17, change "assets" to "assessment."

Page 1501, Line 8, change "farmers" to "members."

Page 1526, Line 20, add "know."

Page 1563, Line 22, change "principle" to "statements."

Page 1652, Line 17, change "an excellent" to "the equine."

Page 1654, Line 16, change "the party" to "departing."

Page 1728, Line 1, change "properly" to "popularly."

Page 1732, Line 1, change "what" to "which."

Page 1741, Line 14, remove comma after "16."

Page 1841, Line 17, change "Gegnar" to "Deganan."

Page 1844, Line 18, change "Gegnar" to "Deganan."

Page 1858, Line 23, change "cross" to "direct."

Page 1911, Line 15, change "named" to "names."

Page 1924, Line 14, change "company" to "association."

Page 1965, Line 18, change "hew" to "new."

Page 1972, Line 24, change "W. Winslow" to "B. Winslow."

Page 2186, Line 22, change "B. C." to "V. C."

Page 2206, Line 18, change "Craig" to "Slaybough."

Page 2282, Line 20, omit "hearing" and add "hearsay," after "this." [2936]

Page 2475, Line 2, change "Dodd" to "did."

Page 2475, Line 7, omit "out."

Page 2755, Line 10, change "applied" to "apply."

Change "O. O. Hastings" to "O. O. Hastin" wherever same occurs in transcript.

Trial Examiner Lindsay: Anything else?

Mr. Painter: I think that is all.

Mr. Mouritsen: That is all for the Board.

Trial Examiner Lindsay: The hearing is closed.

(Whereupon, at 5:00 o'clock p. m., Friday, June 16, 1939, the hearing in the above-entitled matter was closed.) [2937]

[Endorsed]: No. 10148. United States Circuit Court of Appeals for the Ninth Circuit. National Labor Relations Board, Petitioner, vs. J. G. Boswell Company and Corcoran Telephone Exchange, Respondents. Transcript of Record. Upon Petition for Enforcement of an Order of the National Labor Relations Board.

Filed May 27, 1942.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

In the United States Circuit Court of Appeals
for the Ninth Circuit.

No. 10148

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

J. G. BOSWELL COMPANY and CORCORAN
TELEPHONE EXCHANGE,
Respondents.

STATEMENT OF POINTS TO BE RELIED
UPON

Pursuant to Section 6 of Rule 19 of the Court, the National Labor Relations Board, by its Associate General Counsel, hereby submits the following statement on which it intends to rely upon in the above-entitled matter:

I.

The National Labor Relations Act is applicable to the Respondents.

II.

The Board's findings are supported by substantial evidence. Upon the facts so found, respondents have engaged in and are engaged in unfair labor practices within the meaning of Section 8 (1), (2) and (3) of the Act.

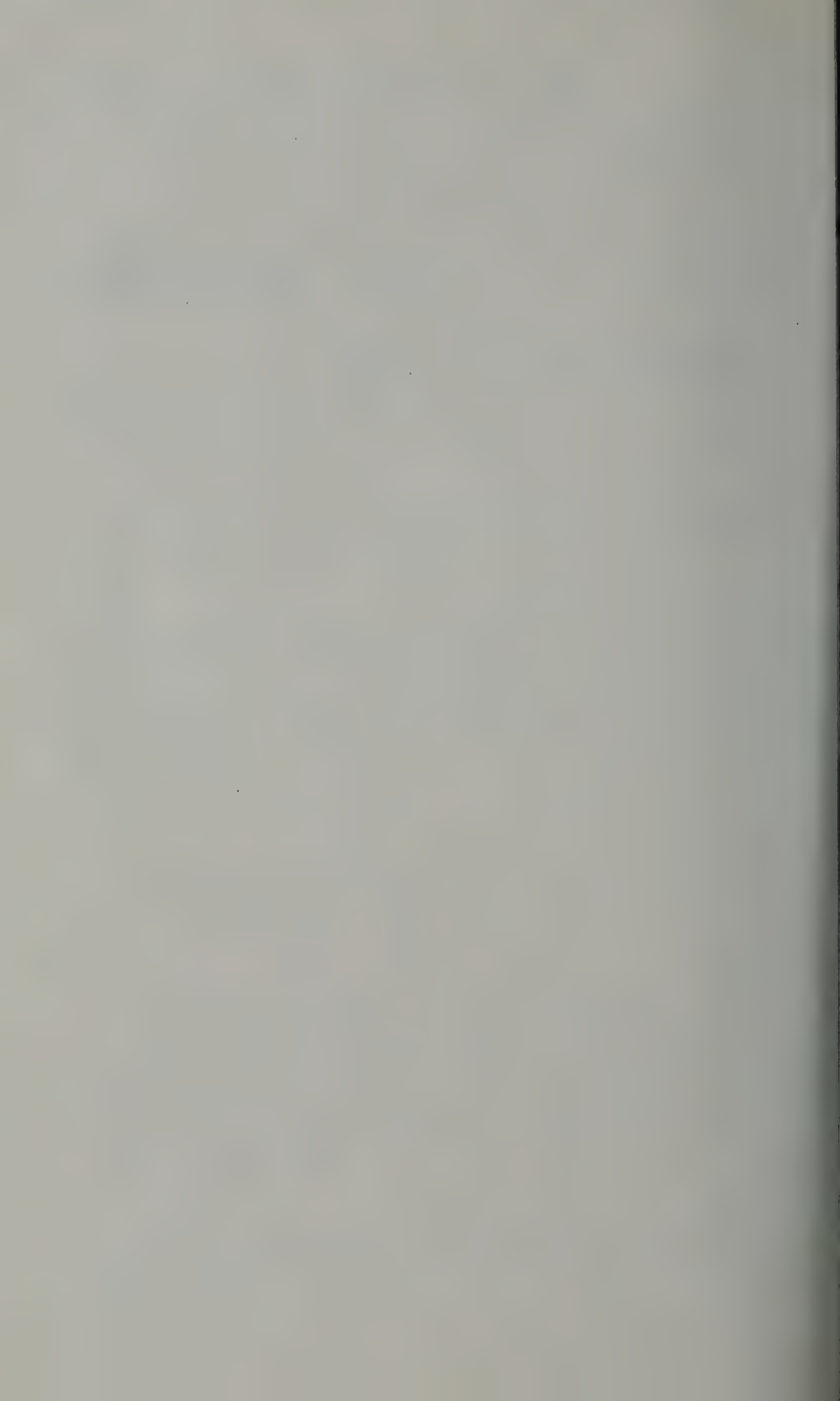
III.

The Board's order is wholly valid and proper under the Act.

Dated at Washington, D. C., this 22nd day of
May 1942.

ERNEST A. GROSS,
Associate General Counsel,
National Labor Relations
Board.

[Endorsed]: Filed May 27, 1942.



No. 10148

**In the United States Circuit Court of Appeals
for the Ninth Circuit**

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

**J. G. BOSWELL COMPANY AND CORCORAN TELEPHONE
EXCHANGE, RESPONDENTS**

**ON PETITION FOR ENFORCEMENT OF AN ORDER OF THE
NATIONAL LABOR RELATIONS BOARD**

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

ROBERT B. WATTS,

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To be argued by:

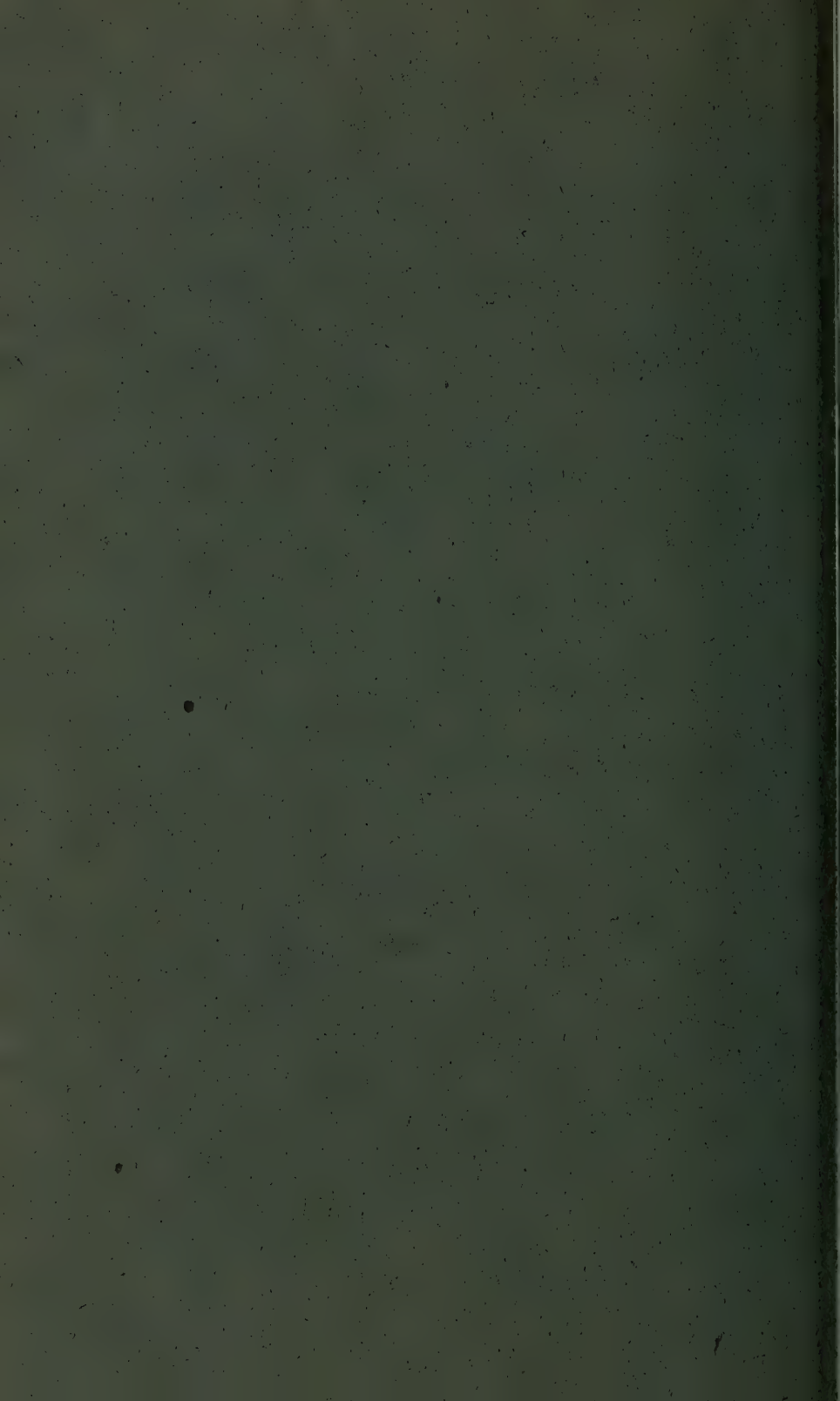
MALCOLM F. HALLIDAY,

Assistant General Counsel.

FILED

OCT 16 1942

PAUL F. O'BRIEN,



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**In the United States Circuit Court of Appeals
for the Ninth Circuit**

No. 10148

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

J. G. BOSWELL COMPANY AND CORCORAN TELEPHONE
EXCHANGE, RESPONDENTS

ON PETITION FOR ENFORCEMENT OF AN ORDER OF THE
NATIONAL LABOR RELATIONS BOARD

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

JURISDICTION

This case is before the Court upon petition of the National Labor Relations Board for the enforcement of an order issued by it against respondents pursuant to Section 10 (c) of the National Labor Relations Act (49 Stat. 449, U. S. C. Supp. V, Title 29, Sec. 151, *et seq.*). Respondents are California corporations engaged in business at Corcoran, California, within this judicial circuit, where the unfair labor practices occurred. The jurisdiction of this Court is based upon Section 10 (e) of the Act.

The pertinent provisions of the Act are set out in the Appendix to this brief, *infra*, pp. 48-49.

STATEMENT OF THE CASE

Upon the usual proceedings had pursuant to Section 10 of the Act, fully set forth in the Board's decision (R. 500-508), the Board, on September 29, 1941, issued its findings of fact, conclusions of law, and order (R. 500-626; 35 N. L. R. B. 968), which may be briefly summarized as follows:

Omitting jurisdictional facts, which are fully detailed *infra*, pp. 4-9, the Board found that respondent J. G. Boswell Company, herein called Boswell Company, in violation of Section 8 (3) of the Act, evicted seven employees from its plant and thereafter refused to reinstate them because of their membership and activities in the Cotton Products and Grain Mill Workers Union, Local 21798, herein called the Federal; that it dominated, interfered with, and assisted the formation and administration of J. G. Boswell Company Employees' Association of Corcoran and Tipton, California, herein called the Association,¹ in violation of Section 8 (2); and that by the foregoing action and various anti-union conduct of its supervisory employees, the Boswell Company interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act, thereby violating Section 8 (1) (R. 527, 537-538, 551-553, 556-557, 575-580, 615-616). The Board further found

¹ The Association was duly served with a copy of the Board's amended complaint and notice of hearing, but did not desire to intervene in the proceedings (R. 504; 2401).

that respondent Corcoran Telephone Exchange, herein called the Exchange, violated Section 8 (3) and (1) of the Act by discriminating in the hire and tenure of employment of Margaret A. Dunn (R. 599, 615-616). In addition to the usual cease and desist and posting provisions, the Board's order directs Boswell Company to offer reinstatement with back pay to the employees discriminated against, to place certain other employees upon a preferential hiring list, to afford all employees reasonable protection in the plant, and to refuse to recognize the Association as the collective bargaining representative of any of its employees; the order also directs the Exchange to reinstate with back pay Margaret A. Dunn (R. 617-621).

SUMMARY OF ARGUMENT

I

Upon the undisputed facts, the National Labor Relations Act is applicable to respondents.

II

The Board's findings of fact are supported by substantial evidence. Upon the facts so found, Boswell Company and the Exchange have engaged in unfair labor practices within the meaning of Section 8 (1), (2), and (3), and Section 8 (1) and (3) of the Act, respectively.

III

The Board's order is valid and proper under the Act.

ARGUMENT

POINT I

**Upon the undisputed facts, the National Labor Relations Act
is applicable to respondents****1. Boswell Company**

Boswell Company, a California corporation, is engaged in California and Arizona in the business of growing and processing cotton and of manufacturing cotton seed products (R. 508-509; 715-718).² Of the products manufactured and processed during the period from July 1, 1937 to June 30, 1938, at its Corcoran, California, plant, where the unfair labor practices occurred, respondent shipped to points outside California all the bales of cotton owned by it, numbering over 40,000, approximately 860 bales of linters, and 60 tons of cottonseed cake; during the same period, it used at its Corcoran plant approximately 52,000 jute "patterns" imported from India and steel bands received from Alabama (R. 509-510; 715-718).

Upon the foregoing facts stipulated by counsel, the applicability of the Act to Boswell Company is not open to question. *N. L. R. B. v. Jones & Laughlin Steel Corp.*, 301 U. S. 1; *Santa Cruz Fruit Packing Co. v. N. L. R. B.*, 303 U. S. 453; *N. L. R. B. v. Fainblatt*, 306 U. S. 601; *N. L. R. B. v. Grower-Shipper Vegetable Ass'n*, 122 F. (2d) 368, 371 (C. C. A. 9).

² The references preceding the semicolons are to the Board's findings; the succeeding references are to the supporting evidence.

2. The Exchange

The Exchange, a California corporation, is engaged in the telephonic communications business in Corcoran, California, where it provides to residents and business establishments the only available telephone service (R. 515; 2459-2464, 2489, 3222-3224). Long distance calls to or from points outside the city of Corcoran or the State of California are effectuated through the joint facilities of the Exchange and the Pacific Telephone and Telegraph Company, a directly controlled subsidiary of American Telephone and Telegraph Company, which, pursuant to an agreement with the Exchange, maintains a cable of telephone wires connected to the Exchange's switchboard in Corcoran (R. 515-516; 2462-2464, 2470, 2475-2476, 2494-2496, 3220-3222). At least three of the Exchange's subscribers—Boswell Company, Western Union Telegraph Company, and the Atchison, Topeka and Santa Fe Railroad—are engaged in interstate commerce (R. 515, 517; 2478-2479, 2491-2492). During 1938 the Exchange handled over 35,000 toll calls through the facilities of the Pacific Telephone and Telegraph Company; of this number there were 77 outgoing calls to points outside California and an undisclosed number of incoming calls from points outside the State (R. 516; 2471-2475, 2490-2492).

The Exchange has contended before the Board (R. 516) that its interstate communications are too small to confer jurisdiction upon the Board. Its position is without merit. The facilities of the Exchange are

an integral part of the vast network of telephone lines which cover the entire nation. While these lines are owned by a large number of small telephone companies, such as the Exchange, they are operated as a unified system by virtue of physical connection of the lines and such operating agreements as are here involved.³ The Exchange's facilities and lines are admittedly available and used for the transmission of interstate messages, both those originating and terminating within

³ The annual report of the Pacific Telephone and Telegraph Company for 1938 states that:

"Throughout the Pacific Coast, in addition to the number of telephones we own and operate—1,853,229 as of December 31, 1938—there were also 283,922 telephones served by 309 other companies with which our toll and long distance lines connect. At the end of the year, inclusive of 56,899 rural and private-line telephones, there was a total of 2,194,050 telephones in the Pacific Coast territory in which we operate. All of the telephones which we operate on the Pacific Coast and those independently owned and operated by connecting companies have complete connection with the Bell System, of which our company is a constituent part. At the end of the year the Bell System telephones totaled, in round figures, 15,761,000, and they interconnected with about 4,124,000 served by connecting companies, all connected by wire or radio telephony with 17,915,000 telephones in other countries and continents. About 93 percent of the world's 40,600,000 telephones are now interconnectible, and the Pacific Coast has promptly available this world-wide service" (R. 2466-2467).

According to the Report of the Federal Communications Commission on the Investigation of the Telephone Industry, 76th Congress, 1st Session, House Document No. 340, p. 141:

"By the end of 1936 the Bell System's control of the desirable telephone-exchange territory in the United States was substantially complete. The integrated system of the long-lines department, the Bell System operating companies, and the connecting independent operating companies [such as the Exchange] furnished an efficient and uniform interconnected Nation-wide telephone service."

See also F. C. C. Report, *supra*, p. 147.

the Exchange's system. The Exchange is thus an *instrumentality* of interstate commerce, and as such is clearly subject to Federal regulation, irrespective of any showing as to the amount of interstate traffic actually using its facilities. *Associated Press v. N. L. R. B.*, 301 U. S. 103, 128; *Pensacola Telegraph Co. v. Western Union Telegraph Co.*, 96 U. S. 1, 9; *N. L. R. B. v. Central Missouri Telephone Co.*, 115 F. (2d) 563 (C. C. A. 8); *The Minnesota Rate Cases*, 230 U. S. 352, 390. Moreover, respondent's interstate aspects assume greater importance by virtue of the fact that the Exchange furnishes the only medium of telephonic communication available to the business establishments of Corcoran, California. The Act "cannot be applied by a mere reference to percentages" (*Santa Cruz Fruit Packing Co. v. N. L. R. B.*, 303 U. S. 453, 467); it is applicable even though the interstate business "involve[s] but a small part of the entire service rendered by the" Exchange. (*Consolidated Edison Co. v. N. L. R. B.*, 305 U. S. 197, 221; *N. L. R. B. v. Fainblatt*, 306 U. S. 601.) ⁴

Precisely in point is the holding of the Eighth Circuit Court of Appeals in the *Central Missouri Telephone Co.* case, *supra*, where the company contended

⁴Comparatively small, independent companies, such as respondent, comprise an important part of the total continental telephone network. "Although the Bell System controls approximately 82 percent of the telephones in the United States, as well as 98 percent of the toll wire mileage, it operates only some 6,700 of the approximately 20,000 exchanges in the country. Toll messages originated by or destined for subscribers at approximately 13,300 exchanges may, and generally do, make use of the services and facilities of both Bell and independent companies." Report of the F. C. C., *supra*, at p. 143.

(115 F. (2d) at 565-566) (1) that since it was a "local telephone company, engaged mainly in the transmission of intrastate communication over lines lying wholly within the limits of one state, [it] cannot be held an instrument of interstate commerce by the mere fact that it effects the transmission of interstate messages to and from points served by it by connecting its lines to those of an interstate carrier"; and (2) that the "interstate messages originating or received over respondent's lines amount to a relatively small percent of the total messages transmitted by respondent in any one year." The Court stated:

These contentions clearly have been foreclosed to respondent by the decisions of the Supreme Court and by at least one decision of this circuit. *The Daniel Ball*, 77 U. S. (10 Wall.) 557; *Ci., N. O. & Tex. Pac. Ry. v. Int. Com. Com.*, 162 U. S. 184; *United States v. Colorado & N. W. R. Co.*, 8 Cir., 157 F. 321; and see *National Labor Relations Board v. Jones & Laughlin*, 301 U. S. 1, 37; *Associated Press v. National Labor Relations Board*, 301 U. S. 103, 128; *National Labor Relations Board v. Fainblatt*, 306 U. S. 601, 606. "Interstate communication of a business nature, whatever the means of such communication, is interstate commerce regulable by Congress under the Constitution." *Associated Press v. National Labor Relations Board*, *supra*. The respondent, in so far as it uses its lines to effect the transmission of interstate communication, thereby becomes an instrument of such commerce.

* * * The fact that only a small part of its activities are connected with interstate com-

merce is not material. "The power of Congress to regulate interstate commerce is plenary and extends to all such commerce be it great or small." *National Labor Relations Board v. Fainblatt*, 306 U. S. 601, 606.

See also *N. L. R. B. v. Bradford Dyeing Ass'n*, 310 U. S. 318, 326; *N. L. R. B. v. Crowe Coal Co.*, 104 F. (2d) 633, 636 (C. C. A. 8), cert. denied 308 U. S. 584; *N. L. R. B. v. Cowell Portland Cement Co.*, 108 F. (2d) 198, 201-202 (C. C. A. 9); *N. L. R. B. v. Pacific Gas & Electric Co.*, 118 F. (2d) 780 (C. C. A. 9); *Consumers Power Co. v. N. L. R. B.*, 113 F. (2d) 38 (C. C. A. 6); *Southern Colorado Power Co. v. N. L. R. B.*, 111 F. (2d) 539, 542-543 (C. C. A. 10); *N. L. R. B. v. Suburban Lumber Co.*, 121 F. (2d) 829 (C. C. A. 3); cert. denied, 314 U. S. 693.

POINT II

The Board's findings of fact are supported by substantial evidence. Upon the facts so found, Boswell Company and the Exchange have engaged in unfair labor practices within the meaning of Section 8 (1), (2), and (3), and Section 8 (1) and (3) of the Act, respectively

A. The Boswell Company

1. Interference, restraint, and coercion in violation of Section 8 (1) of the Act

Intermittent attempts to organize Boswell Company's employees, begun in January or February 1938, resulted in the calling, on July 13, 1938, by Organizer Prior of the first formal organizational meeting of the Federal (R. 518-519; 816-824, 1014-1016, 1045-1049, 1100-1102, 1105-1107, 1834-1837). Among those who attended were Supervisor Bill Robinson and Clyde Sitton, nephew of Superintendent Gordon Hammond

(R. 519; 820-822, 1106-1107, 3147). Immediately following this meeting, Boswell Company's supervisors,⁵ as the Board found (R. 520-521), "inaugurated a course of conduct tending to obstruct the formation and growth of the Federal." Supervisors Tom and Joe Hammond made it clear to the employees where respondent stood with respect to the Federal: Thus within the next 2 days, Tom Hammond interrogated an employee about his Federal affiliation, advising that the Federal was "a no-good bunch trying to run somebody else's business" (R. 521; 1748-1750); while Joe Hammond bluntly informed Employee Andrade that Boswell Company would never tolerate or recognize a union, warned that respondent would shut the mill in the event that a union gained a foothold, and pointedly inquired whether the Federal would feed Andrade if the mill closed (R. 521-522; 1702-1703). This anti-union conduct was intensified during the months of August and September. Supervisors Joe and Tom Hammond, in wholesale fashion, questioned employees about their union affiliations, the Federal, and its membership (R. 522; 985-986, 992, 994-995, 1035-1037, 1576, 1617-1619, 1684-1685); advised them to seek employment elsewhere if they wanted to join a union (R. 522; 994-995, 1618-1619); warned that union members would not be reemployed at the termination of the approaching seasonal lay-offs (R. 522; 987-989); and threatened to "lock up and shut the door" if the Federal succeeded in organizing the plant (R. 522; 1207-1209. See also 1740-1743).

⁵ The supervisory status of these employees and respondent's responsibility for their activities are discussed *infra*, pp. 12-13.

When in October 1938 the Federal protested this conduct to Superintendent Hammond, the latter informed the union committee, composed of Spear, Farr, and Martin, that he had not "authorized" such conduct, but refused to permit the posting of a notice in the plant to the effect that respondent would not discriminate against employees who wished to join the Federal (R. 523; 1519-1528, 1571-1573). Thereafter the anti-union conduct of respondent's supervisory employees continued as before; employees were warned that a union "wouldn't help the plant any" (R. 523; 1704. See also 1780), that certain union members were "just working on borrowed time" (R. 523; 1787), that the Federal was "the worst thing that ever happened here" (R. 523; 1862-1863), and a normal seasonal shut-down was attributed to "the boys joining the union" (R. 523; 1656-1659).

During a conference between Superintendent Hammond and the Federal committee on November 17, Spear called attention to the fact that the supervisors were continuing their coercive conduct, particularly singling out Joe and Tom Hammond (R. 524; 856, 862-864, 1584-1585). However, Hammond merely stated that he had told Joe and Tom not to talk about the Federal and that they had not been authorized to engage in anti-union activities (R. 524; 1159-1164, 3019-3020). That afternoon, Tom Hammond, obviously uninhibited by any restraining orders of his superiors, angrily accused Committeemen Spear and Farr of "trying to get his job" by reporting his anti-union conduct to the Superintendent, ominously adding that "we are going

to straighten this out tomorrow" (R. 527; 990-991, 1533-1537).

The statements and conduct of respondent's supervisory employees hereinabove outlined constitute well recognized forms of interference, restraint, and coercion in violation of Section 8 (1) of the Act, and the Board properly so found (R. 527). See e. g., *International Assn. of Machinists v. N. L. R. B.*, 311 U. S. 72, 76-80; *H. J. Heinz Co. v. N. L. R. B.*, 311 U. S. 514, 518; *N. L. R. B. v. Link-Belt Co.*, 311 U. S. 584, 600; *N. L. R. B. v. Sunshine Mining Co.*, 110 F. (2d) 780, 786 (C. C. A. 9); *North Whittier Heights Citrus Assn. v. N. L. R. B.*, 109 F. (2d) 76, 78 (C. C. A. 9); *N. L. R. B. v. Pacific Gas & Electric Co.*, 118 F. (2d) 780, 788 (C. C. A. 9).

Respondent's contention before the Board (R. 525-526) that it is not responsible for the conduct of Joe Hammond, Tom Hammond, and Bill Robinson is plainly without merit. These men held positions which gave them certain powers of direction and control over other employees, which identified them with the management. Tom Hammond and Joe Hammond, salaried employees, supervise the operations of the gins and the mill, respectively; are referred to as "foremen" by the employees whose work they direct; and occasionally laid off and rehired employees (R. 525-526, 624; 864-865, 987-991, 1005-1006, 1077, 1615-1616, 1660-1664, 1689-1690, 1747, 1754-1755, 1788, 2418). Bill Robinson, described by the employees as "foreman" and "subforeman" in the gins, gives orders and instructs the men in the technical performance of their functions;

informs employees when to report for work and when to stop working; and exercises general supervision over them (R. 625; 995, 1016-1018, 1043, 1210, 1223-1224, 1509-1510, 1615, 1785-1786). Since the employees reasonably "could conclude or infer that the acts and deeds of the [men in question] represented the attitude of the employer, then the Board may find that such acts and deeds were the acts and deeds of the employer" even though they were not expressly authorized. *N. L. R. B. v. Pacific Gas & Electric Co.*, 118 F. (2d) 780, 787 (C. C. A. 9); *Machinists, Link-Belt*, and *Heinz* cases, *supra*. Moreover, as the Board found (R. 526-527), Boswell Company ratified the illegal conduct of its supervisory employees; respondent's failure to take effective means to prevent their recurrence when they were brought to its attention, its refusal to take, or permit to be taken, appropriate steps to eradicate the effects of such conduct or to disabuse the employees generally of their belief that the "acts and deeds" of the supervisors "represented the attitude of" the company (*Pacific Gas & Electric Co.* case *supra*), establishes that Boswell Company "was as responsible for" these activities "as if it had directed them in advance." *Heinz* case, *supra*, p. 521; *Swift & Co. v. N. L. R. B.*, 106 F. (2d) 87, 93 (C. C. A. 10); *Consumers Power Co. v. N. L. R. B.*, 113 F. (2d) 38, 44 (C. C. A. 6); *F. W. Woolworth Co. v. N. L. R. B.*, 121 F. (2d) 658, 661 (C. C. A. 2).

We submit that no issue is raised by respondent's further contention before the Board (R. 525) that even upon the facts as found by the Board the conclusion

that the employees were subjected to illegal compulsions should not be sustained because there was no actual proof of the effect of such conduct upon union membership. Apart from the judicially recognized fact that "the employee is sensitive and responsive to even the most subtle expression on the part of his employer, whose good will is so necessary" [*N. L. R. B. v. Griswold Mfg. Co.*, 106 F. (2d) 713, 722 (C. C. A. 3); *Link-Belt Co.* case, *supra*, at p. 600], the determination whether given employer conduct has "interfered with, restrained, or coerced" employees in the exercise of their statutory rights is an inference which "must of necessity be based on the existence of conditions or circumstances which the employer created or for which he was fairly responsible." *Link-Belt Co.* case, *supra*, at p. 588; *System Federation No. 40 v. Virginian Ry. Co.*, 84 F. (2d) 641, 644 (C. C. A. 4), *aff'd*. 300 U. S. 515. Moreover, "it is not necessary that the interference shall be successful in preventing organization. It is only necessary to show that the employer interfered, intimidated, or coerced. It is the purpose of the statute to see that the employer does not interfere or intrude into the affairs of the employees" *Rapid Roller Co. v. N. L. R. B.*, 126 F. (2d) 452 (C. C. A. 7).⁶

⁶ See also, e. g., *N. L. R. B. v. Friedman-Harry Marks Clothing Co.*, 301 U. S. 58, enforcing 1 N. L. R. B. 411, 426, 430; *N. L. R. B. v. Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261, 270-272; *N. L. R. B. v. Newport News Shipbuilding & Dry Dock Co.*, 308 U. S. 241, 248, 250-251; *N. L. R. B. v. A. S. Abell Co.*, 97 F. (2d) 951, 956 (C. C. A. 4); *Fort Wayne Corrugated Paper Co. v. N. L. R. B.*, 111 F. (2d) 869, 874 (C. C. A. 7).

For Board orders enforced in the face of proof that the employees, if called, would have testified that they were not actually

2. The eviction of, and the refusal to reinstate, the active Federal members in violation of section 8 (1) and (3)

(a) *The evictions*

As we have already indicated (*supra*, pp. 11-12), on the afternoon of November 17, Supervisor Tom Hammond accused the Federal Committeemen of "trying to get his job" and presciently warned that "We are going to straighten this out tomorrow." On the morning of November 18, Spear, Martin, Farr, Andrade, Wingo, Briley, and Powell, the officers and only active Federal members then employed, appeared for work displaying their union buttons for the first time (R. 528; 1290-1291, 1493-1494, 1618-1620). At 10 a. m. Supervisor Bill Robinson suddenly turned off the power driving the gins, announcing that "We are going to shut the gin down for a little meeting outside" (R. 528; 995). In response to queries from Farr and Martin concerning the nature of the meeting, Robinson explained that "it is about the union * * * we are going * * * to see whether we are going to have this union or not. We want everybody to go out there * * *" (R. 528; 995-996, 1210, 1041-1043. Also see 1496-1497).

In the presence of Supervisors Tom Hammond, Joe Hammond, Bill Robinson, Kelly Hammond, Oscar

"influenced, restrained, interfered with, coerced, or dominated," see, e. g., *N. L. R. B. v. Automotive Maintenance Machinery Co.*, 315 U. S. 282, reversing 116 F. (2d) 350 (C. C. A. 7); *Bethlehem Steel Co. v. N. L. R. B.*, 120 F. (2d) 641 (App. D. C.); *American Enka Corp. v. N. L. R. B.*, 119 F. (2d) 60, 62-63 (C. C. A. 4); *N. L. R. B. v. Brown Paper Mill Co.*, 108 F. (2d) 867, 871 (C. C. A. 5), cert. denied, 310 U. S. 651.

Busby, and Rube Lloyd,⁷ the assembled employees in the yard staged an anti-union demonstration against the Federal and its members (R. 528-529; 996-1004, 1010-1012, 1210-1220, 1274-1276, 1497-1507, 1622-1625). One employee proclaimed to Farr, "the company doesn't want your union here. I don't see why you fellows should turn agin' the company you are working for" (R. 528; 998). Supervisor Lloyd shouted "throw them [the union men] out" (R. 528; 998-1001, 1044, 1623-1625). With the rallying cry that "the company is behind us," Lloyd's proposal was first echoed by another employee (R. 529; 1000, 1215-1217, 1624-1626, 1707-1708), and then acted upon by three men who seized President Spear while he was explaining the purposes of the Federal, and, accompanied by the remainder of the mob and supervisors, forcibly propelled him across the highway to respondent's offices where they loudly demanded that the Federal men be discharged (R. 528-529; 1001-1003, 1043-1045, 1216-1219, 1500-1504, 1596-1597, 1602-1607, 1706-1710, 2618-2619). General Manager Louis Robinson thereupon appeared and ordered the employees to return to

⁷ Kelly Hammond is the supervisor in charge of the night shift in the mill (R. 626; 1754). Oscar Busby, the "foreman" in the machine shop, has from three to five subordinates and is regarded by General Manager Robinson as the top ranking employee in the shop (R. 626; 1011-1014, 2631, 2348). Rube Lloyd, the "building superintendent," supervises the work of the carpenters and construction employees to whom he gives working orders (R. 625-626; 1011-1012, 1622, 1916-1917, 1922, 2630). Both Busby and Lloyd are salaried employees (R. 626; 2410). See pp. 12-13, *supra*, for discussion of Boswell Company's responsibility for the conduct of such supervisors.

work, promising to "straighten the matter out" presently (R. 529; 2619, 2626-2627, 1004-1005, 1219, 1249-1251, 1504-1506).

Upon returning to their posts at the plant the Federal members were prevented from working by the supervisors who shut off the independently controlled motors on their machines and directed them not to start operations (R. 529; 1004-1011, 1220, 1222, 1241-1242, 1506-1509, 1608-1609, 1625-1626, 1709-1711). Farr's appeal for assistance to Tom Hammond, supervisor of the gins, fell on deaf ears (R. 529; 1006). Finally, Supervisor Robinson, remarking that "it seems like either the union men run this or the non-union," advised the Federal members to leave; whereupon the members working in the gins left the plant and went to Farr's home where the latter called General Manager Robinson to inform him of what had transpired (R. 529-530; 1007, 1013-1014, 1222-1224, 1239-1242, 1250-1251, 1513-1515, 1711, 1738). In reply to Farr's inquiry as to whether the men should return to work, Robinson stated that he would think the matter over and let them know (R. 530; 1013-1014, 2620-2621).

Immediately upon their departure, Powell, the only Federal member employed in the yard, was called into the plant and ordered by Supervisors Robinson and Hammond to operate machines left vacant by the other Federal members, an assignment which he declined on the ground that he would be "scabbing on the Union" (R. 530-531; 1283-1291). Bill Robinson thereupon warned Powell to remove his union button before the other employees noticed it and "scattered up the ground

with him" (R. 530; 1290-1291). Confronted thus with the alternative of renouncing his membership in the Federal and "scabbing" or of being manhandled, Powell left the plant and joined the other members at Farr's home (R. 530; 1291-1292).

Without disputing the foregoing facts, respondent seeks to evade responsibility for the evictions on the inconsistent grounds, asserted before the Board (R. 531; 316) (1) that the Federal members acted unreasonably in voluntarily leaving the plant without consulting General Manager Robinson, and (2) that the men were ousted by the non-union employees, without authority from the company, because of resentment against their union activities. Both contentions are without merit.

After having been confronted with a show of force and prevented from working with the approval and assistance of the supervisors, Bill Robinson's "suggestion" to leave the plant must necessarily have been interpreted, as the Board pointed out (R. 531), "as a threat that further interference with their work, if not actual assaults, would ensue if they failed to comply therewith." Under such circumstances, the men clearly acted reasonably in avoiding further disturbances and possible bodily injuries by leaving the plant and immediately appealing to Manager Robinson. As the latter admitted in his report to respondent's president, the Federal members were "run off the job" (R. 535, 569; 2603).⁸

⁸ Powell was similarly justified in departing from the plant under threat of physical harm if he did not disassociate himself

Respondent's second contention finds no support in the record.⁹ On the contrary, the undisputed evidence hereinabove outlined amply warrants the Board's findings (R. 533) that "representatives of the company initiated, led, and countenanced the entire anti-union demonstration" and were the "principal molesters of the Federal members." Moreover, even assuming the correctness of respondent's contention, contrary to the facts and the Board's findings, respondent was still responsible for the evictions (pp. 23-27, *infra*).

(b) *The refusal to reinstate the ousted employees*

Although General Manager Robinson had informed Farr in their telephone conversation on the morning of November 18 that he would notify the evicted employees whether they should return to work (*supra*, p. 17), no such notification was ever given. Instead, Robinson sought to delegate to the evictors full authority to determine the question of reinstatement. Thus, during the same day, November 18, Robinson suggested

from the Federal, a plainly illegal condition. Compare *N. L. R. B. v. National Motor Bearing*, 105 F. (2d) 652, 658-659 (C. C. A. 9); *N. L. R. B. v. Sunshine Mining Co.*, 110 F. (2d) 780, 792 (C. C. A. 9), cert. denied 312 U. S. 678; *Rapid Roller Co. v. N. L. R. B.*, 126 F. (2d) 452, 460-461 (C. C. A. 7). Thereafter, both respondent and the Federal regarded Powell as being in the same category as the other evictees (R. 537).

⁹ While it is true that the Federal had requested Boswell Company to shorten the hours from 12 to 8 per day so as to spread the available work and thereby forestall further lay-offs, and that Boswell Company had apparently acceded to this request "to provide employment as long as possible," there is no evidence that non-union employees resented this fact (R. 531-532).

to Supervisors Busby and Lloyd that a committee be appointed to "talk to the union men that were run off the job this morning and offer to allow them to come back to work on some basis as might be agreed on" at a meeting to be held at the plant that night for the organization of the illegal Association (R. 568-570; 2603, 2617-2618, 2620-2624, 2630-2632, *infra*, p. 30). Again, when Organizer Prior called Robinson that evening for a conference "to straighten [the matter] out," Robinson replied that he could do nothing until he received a report from the employees, adding that he "felt we were fully capable of straightening it out ourselves" (R. 541; 2849, 868-870). The following morning Prior, Spear, and Martin called in person on Robinson and Superintendent Gordon Hammond (R. 541; 1112-1113). Although at that time and for about a week thereafter work was available for all the ousted employees, Robinson merely offered to "feel out the sentiment" among the employees and "see how they felt about these men returning to work," explaining that the situation was "tense" and that he would have to proceed with care to avoid another "flare up" (R. 541; 869-870, 1112-1114, 1135-1140, 1242, 2858, 2862-2872). Robinson then rejected the Federal's eminently proper request for special protection for its members against further molestation while at work, and refused to expedite a final determination of the matter because it allegedly necessitated a decision on the part of respondent's higher officials at Los Angeles, a purely fictitious ground as respondent's president subsequently indicated in informing Prior that the

situation was in the “hands” of “the local management” at Corcoran, i. e., Superintendent Hammond and General Manager Robinson (R. 541, 543; 871-872, 1557-1558, 2608, 2850-2851).

Respondent never offered to reinstate the ousted employees but continued its evasive and dilatory tactics. While indicating on November 26 and 28, in response to further requests for reinstatement, that there was insufficient work for all the ousted employees, respondent refused to give any information as to which jobs were still open or to recognize the right of all evictees to be assured of future reinstatement (R. 543-546; 874-875, 1179-1185, 1188-1191, 2855-2856, 3024-3026, 3172-3173).

On the afternoon of November 28, following the interview with Prior, Robinson sent registered letters to Evictees Martin, Powell, and Andrade, informing them that the operations on which they had been engaged were closed and “your employment by this Company terminated” (R. 544; 2858-2872). Although the jobs of Evictees Spear, Farr, and Wingo were available until December 6, when they received similar registered letters, respondent made no offer of reinstatement in the interim (R. 545, 549; 2868-2872, 3002-3004).¹⁰ Since this was apparently the first time that respondent had employed the medium of registered mail to inform an employee that he was discharged or temporarily laid off, the employees reasonably concluded that the letters

¹⁰ Evictee Briley was reemployed upon personal consultation with Superintendent Hammond and by November 28 had joined the company-dominated Association (R. 538; 800, 2397, 3073).

constituted notice of final discharge (R. 549-551, 555; 1546, 1645, 2933).¹¹

While General Manager Robinson was thus ostensibly "considering" and rejecting the Federal's repeated requests for reinstatement, Superintendent Gordon Hammond gave further confirmation of Boswell Company's determination to exclude from its employ adherents of the Federal. Thus, on November 19, after the meeting between the Federal and General Manager Robinson (*supra*, p. 20), Hammond summoned Spear and pleaded, "Now, Lonnie, you see what this union business has led to. You can't hope to put it over * * * if you will drop this union business you can come back to work" (R. 546; 1540-1541). Hammond then indicated that some of the evictees would never be permitted to return to work in the plant (*ibid.*). Spear rejected this offer and a similar one made December 6 (R. 546; 1546-1547). Again, on November 26, Evictee Farr spoke to Hammond about reinstatement after the latter had conferred with the Federal representatives (R. 547; 1088-1090). Although Farr's job was then vacant and remained vacant for a week thereafter (R. 547; 2872), Hammond rebuffed him with the statement, "We can't use you at this time" (R. 544-545, 547; 1090-1091, 2872,

¹¹ Respondent contends that the purpose of the letters was merely to explain to the employees in question that they would no longer receive the wages which respondent had continued to pay them (R. 549, 555; 2934). This explanation, however, fails to account for the dispatch of a similar letter to Elgin Ely, another Federal member, who was ill and not receiving any pay (R. 554-556; 802, 1781-1782, 1792-1796, 2934). Moreover, the ousted employees had been receiving their checks at respondent's office and could readily have been notified in person of any change (R. 1638, 1085-1086).

3003). Shortly after November 28 Hammond sent for Evictee Powell, assured him that the men would "lay off" him,¹² and offered to reinstate Powell as soon as he discovered that the Federal was "all hooey" and "a bunch of fellows claiming something they couldn't back up" (R. 546-547; 1295-1296, 1452-1453).

In view of their eviction, Boswell Company's refusal to reinstate them unless they surrendered their Federal membership, and the contents of the registered letters, the employees concluded upon receipt of these letters, as the Board found it was reasonable for them to do, that further application for reinstatement would be futile (R. 550; 1546, 1795-1796). Nevertheless, the Federal made one more attempt on January 18, 1939, when Prior inquired whether Robinson had changed his attitude with respect to reinstatement of the Federal members; Robinson's reply was that his position was unaltered (R. 580; 878). With the exception of Briley (*supra*, p. 21), none of the ousted employees had been reinstated at the time of the Board hearing (R. 538).

(c) *Conclusion as to discrimination*

The Board found (R. 537-538, 551-553, 616) that Boswell Company was responsible for the ouster from its plant of the Federal members on November 18 and thereafter refused to reinstate them because of their membership and activities in the Federal, thereby dis-

¹² Compare this avowed ability to persuade the evictors to "lay off" Powell with Robinson's rejection of the Federal's requests for reinstatement on the alleged ground that Boswell Company was unable to cope with the situation (*supra*, p. 20).

criminating in their hire and tenure of employment in violation of Section 8 (1) and (3) of the Act. This finding is clearly proper.

That the employees were evicted from the plant because of their membership and activities in the Federal is not disputed. Through the acts of its supervisory employees (*supra*, pp. 15-18), respondent's role in these evictions was direct and unequivocal; hence its responsibility for them is based on the clearest possible grounds. Compare *N. L. R. B. v. Sunshine Mining Co.*, 110 F. (2d) 780, 792, (C. C. A. 9), cert. denied 312 U. S. 678; *N. L. R. B. v. Ford Motor Co.*, 114 F. (2d) 905, 911 (C. C. A. 6), cert. denied 312 U. S. 689; *N. L. R. B. v. Ford Motor Co.*, 119 F. (2d) 326 (C. C. A. 5), enforcing 26 N. L. R. B. 322; *N. L. R. B. v. Goodyear Tire & Rubber Company*, 129 F. (2d) 661 (C. C. A. 5); *N. L. R. B. v. General Motors Corp.*, 116 F. (2d) 306, 310 (C. C. A. 7). Indeed, even if its supervisory employees had been mere passive onlookers, which we have shown they were not, their failure to take reasonable steps to stop and prevent the molestation of the Federal members, even when called upon for assistance, is in itself sufficient to fasten responsibility on respondent. See, e. g., *N. L. R. B. v. Hudson Motor Co.*, 128 F. (2d) 518, 532-533 (C. C. A. 6); *N. L. R. B. v. J. Greenebaum Tanning Co.*, 110 F. (2d) 984, 986-987 (C. C. A. 7), cert. denied 311 U. S. 662; *General Motors Corp.*, *Ford Motor Co.*, and *Goodyear Tire & Rubber Co.* cases, *supra*.

Nor is respondent's position aided by its assertion that the men were ousted by the non-union employees because of resentment against their union activities, a

fact which we have shown is not borne out by the record (*supra*, pp. 15–19). For sometime prior to the evictions, respondent's supervisors had deliberately disparaged the Federal, impugned its purposes, and created in the minds of the employees a fear for their livelihood by threatening that respondent would close the plant if the Federal gained a foothold (*supra*, pp. 10–12). The anti-Federal demonstration took place in the presence of supervisory employees who made no effort to interfere; on the contrary it was a supervisor who egged them on with the cry of "Throw them out" (*supra*, p. 16). When the matter was brought to the attention of General Manager Robinson, he completely neglected his affirmative duty to take reasonable steps to restore and maintain "order and discipline characteristic of a well-run manufacturing plant" *General Motors Co.* case, *supra*, at p. 311. Under these circumstances, it is manifest, as this Court pointed out in *N. L. R. B. v. Sunshine Mining Co.*, 110 F. (2d) 780, 792, cert. denied 312 U. S. 678, that "this attitude of the respondent's non-union employees was encouraged by its agents and supervisory officials, and brought on by them * * * it must be held responsible for what followed * * * the actual effect of respondent's conduct was to discharge those employees." To the same effect are *Clover Fork Coal Co. v. N. L. R. B.*, 97 F. (2d) 331, 335 (C. C. A. 6); *N. L. R. B. v. Ford Motor Co.*, 114 F. (2d) 905, 911–912 (C. C. A. 6), cert. denied 312 U. S. 689; *N. L. R. B. v. Elkland Leather Co.*, 114 F. (2d) 221, 223–224 (C. C. A. 3), cert. denied 311 U. S. 705; *General Motors Corp., J. Greenebaum Tanning*, and *Goodyear Tire & Rubber Co.*, cases, *supra*.

Finally, whether the evictions be regarded as having been perpetrated by the supervisors or the nonunion employees, respondent's subsequent conduct furnishes an independent basis of liability. Under a plain duty to repudiate the unlawful evictions and restore the ousted men to their jobs (see, e. g., *Hudson Motor Co. case, supra*), respondent did neither. Without making any investigation of the incident, General Manager Robinson reported that the trouble was caused by the Federal members, thereby indicating his condonation of the action of the evictors and partisanship against the Federal (R. 533-534, 535; 2915).¹³ Moreover, instead of reprimanding or disciplining the evictors as it should have done, respondent completely surrendered the reins of control to them by delegating full authority to determine the basis upon which the evictees should be permitted to return to work (*supra*, pp. 19-20).¹⁴ At

¹³ At the insistence of a Board agent, respondent posted on November 23 a notice to the effect that it would not in the future violate Section 8 (1) and (3) of the Act (R. 535-536). In view of the continued absence of the evicted employees, respondent's leniency toward the leaders of the anti-Federal demonstration, and respondent's subsequent illegal conduct, the Board properly concluded (R. 536-537) that the notice "cannot have impressed the employees as a sincere disavowal or condemnation by the company of the antiunion activities of its plant supervisors."

¹⁴ No amount of pressure upon respondent could have justified such concessions. The statute "leaves no room for the appeasement of hostile interests by conceding [to employees] * * * less than the Act requires." *McQuay-Norris Mfg. Co. v. N. L. R. B.*, 116 F. (2d) 748, 752 (C. C. A. 7), cert. denied, 313 U. S. 565. As stated by this Court in *N. L. R. B. v. Star Publishing Co.*, 97 F. (2d) 465, 470, "The Act prohibits unfair labor practices in all cases. It permits no immunity because the employer may think that the exigencies of the moment require infraction of the statute. In fact, nothing in the statute permits or justifies its violation by the employer."

no time did respondent voluntarily offer to reinstate the ousted employees except on the illegal condition that they abandon the Federal. *N. L. R. B. v. National Motor Bearing Co.*, 105 F. (2d) 652, 658 (C. C. A. 9); *Sunshine Mining Co.* case *supra*. And when the Federal representatives made repeated requests for reinstatement, although they were under no duty to do so, respondent refused to reinstate those whose jobs were still open or to give any assurance of future reinstatement to those whose jobs were closed for the season. At the same time respondent made it clear to the evictees individually that surrender of their Federal membership was the price required for reinstatement. Obviously, the mere payment of wages to the men for the brief period which remained until the end of the season's operations did not discharge respondent's duty. Nor was respondent's purported willingness to reinstate the men, without some assurance of protection against future molestation at their work, adequate under the circumstances. In view of the evictions, respondent's failure to repudiate them or discipline those who participated therein, and the admittedly "tense" situation which might cause another "flare-up," the evicted employees were fully justified in insisting on some guarantee of protection. (See, e. g., *Hudson Motor Co.* and *General Motors Corp.* cases, *supra*.) Respondent's conduct plainly demonstrated that it condoned and adopted the evictions as its own. *H. J. Heinz Co. v. N. L. R. B.*, 311 U. S. 514, 521; *N. L. R. B. v. Isthmian Steamship Co.*, 126 F. (2d) 598, 600 (C. C. A. 2); *Hudson Motor Co.*, *Goodyear Tire & Rubber Co.*, and other cases cited, *supra*, p. 24.

Since the evictions and refusal of reinstatement were caused, as the Board found (R. 537-538, 551-553), by the membership and activities of these men in the Federal, the Board properly concluded (R. 615-616) that respondent had discriminated in their hire and tenure of employment in violation of Section 8 (1) and (3) of the Act.

3. The discriminatory discharge of Elgin Ely in violation of section 8 (1) and (3)

Elgin Ely joined the Federal on November 11, 1938 (R. 554; 1784). The next day he discovered that his rate of pay had been reduced (R. 554; 1778). When he asked his superior, Tom Hammond, the reason for the reduction, Hammond replied, "Maybe the union had something to do with it * * *. Maybe you should get your committee together and go up to the office and see if they couldn't find out something about it" (R. 554; 1780). On November 16 Ely was excused from work because of an injured thumb which had become infected (R. 555; 1781-1784, 2977-2979). Thereafter, he received a registered letter from respondent, dated November 28, to the effect that his machine had been shut down on November 26 and that his "employment by this Company terminated at that time" (R. 555; 2862). Because of the contents of this letter, Ely did not apply for reinstatement when he was released for work by his physician on December 2 (R. 555; 1795-1796).

The registered letter was identical with that sent about the same time to the ousted employees (R. 555; 2862, 2866, 2868, 2870, 2872). The medium of regis-

tered mail had never before been used by respondent to notify an employee absent because of illness that he was being laid off or discharged (*supra*, pp. 21-22). Moreover, the primary reason advanced by respondent for sending such registered letters to the evictees, i. e., to notify them that the checks which they had been receiving while not performing any work would be discontinued (*supra*, p. 22), did not exist in the instant case since Ely's last pay check was for the week ending November 17 (R. 55; 802). The foregoing facts plainly indicate that respondent considered Ely to be in the same class with the ousted Federal members and to merit the same discriminatory treatment.

Respondent's contention that no finding of discrimination against Ely may be made because he would in any event have been laid off on November 26 due to seasonal slack, is without merit. The record shows that in previous seasonal lay-offs, the men, including Ely, were reemployed upon application when their operations resumed (R. 556-557, 1204-1205, 1490-1492, 1612-1613, 1655-1656, 1744-1749, 1775-1778, 1805, 1914-1918). The unusual medium employed by respondent to notify Ely of the termination of his job evidences a purpose to deprive him of his normal expectancy of reemployment after a seasonal lay-off. The Board properly concluded (R. 556) that, "in view of the entire background, the Company's acts of discrimination against the ousted employees, and its general antipathy to the Federal," respondent intended by its registered letter to convey to Ely the impression that, as a member of the Federal, the termination of

his employment was *final*, and to “deter him from seeking reinstatement, upon recovering from his injury. The letter had this effect.” By such conduct, whether characterized as a discharge or a lay-off, respondent discriminated with respect to the hire and tenure of Ely’s employment in violation of Section 8 (3) and (1) of the Act.¹⁵

4. Domination of, and interference with, the formation and administration of the Association, in violation of section 8 (1) and (2)

Within a few hours after the eviction of the Federal members on November 18, a group of employees, including Supervisors Lloyd and Busby, journeyed on company time to a neighboring city to secure information about the procedure for forming a “company union” as a bulwark against *bona fide* organization (R. 568-570, 571-572; 902-908, 2602-2603, 2614-2618, 2921-2923). That afternoon, the supervisors reported their progress on this project to General Manager Robinson, informing him of their intention to hold a meeting at the plant that evening (R. 569-570; 2602-2603, 2620-2623). Robinson tacitly approved their activities, “suggested” the procedure to be followed at the meeting, and delegated to its organizers full authority to prescribe the conditions for the return of the ousted Federal members (R. 569-570; 2603).

¹⁵ In view of respondent’s practice of reemploying its workers after seasonal lay-offs, there is no merit in respondent’s further contention before the Board that Ely’s employee status had been severed upon the cessation of his work on November 26. *North Whittier Heights Citrus Ass’n v. N. L. R. B.*, 109 F. (2d) 76, 82 (C. C. A. 9), cert. denied 310 U. S. 632. The contention is in any event pointless since the Act prohibits discrimination against non-employees as well as those who are employees. *Phelps Dodge Corp. v. N. L. R. B.*, 313 U. S. 177.

About 50 employees and 6 supervisors attended the meeting held that evening at respondent's office building (R. 569-570; 1542-1544, 2346-2350, 2448-2449, 2923, 3135-3136, 3140-3142). Supervisor Tom Hammond told at least one of his subordinates to be present (R. 570; 2348). Supervisor Busby addressed the employees, proclaiming that there was no reason why a "company union" would not "work" at the plant (R. 571; 2347). After some discussion, blank sheets of paper were circulated and signed by employees and supervisors (R. 571; 2347-2348, 2451-2453).¹⁶

Formal organization of the Association was perfected at a meeting held on November 28 and attended by the same supervisors, at least four of whom signed the constitution (R. 571; 2352-2355, 2372-2398, 2399, 2407, 2419, 2450-2453). Supervisors Busby and Lloyd were elected vice president and a member of the labor relations committee, respectively (R. 572; 2348-2354, 2406-2411, 2414-2415, 2419-2420, 2450). The remaining offices were filled by employees who, while not strictly speaking supervisors, held positions which, as the Board pointed out (R. 578), "identif[ied] them clearly with the management of the Boswell Company rather than its ordinary plant employees."¹⁷ Notices of Asso-

¹⁶ One employee was accosted outside the meeting room in the presence of Superintendent Hammond with the suggestion that he "go in the office and sign that paper" to "keep this God damned A. F. of L. union out of here" (R. 571; 1790).

¹⁷ *President Hubbard* is respondent's "farm adviser," with an office in the building housing other company officials (R. 578; 2288-2289, 2408-2410). Performing no functions in connection with the operations of the plant, Hubbard's primary duty is to instruct foremen and contractors in farming operations (*ibid.*). *Treasurer Brenes* is the company's cashier and head bookkeeper

ciation meetings were freely circulated in the plant during working hours and at least one employee was warned by Supervisor Tom Hammond to attend the meeting "if you want to keep on working" (R. 512-513; 2350-2352).

The Association presents the anomaly, according to its constitution, of existing for the purpose of collective bargaining with the company in respect to all matters and "to not interfere with the right of any member or members to present grievances individually to the management" (R. 573; 2375-2376). Association membership is limited to employees of 30 days' continuous service; membership on minor committees, to employees of at least 6 months' service; and eligibility to office or to serve on the labor relations committee, to those of at least one year's continuous service (R. 573; 2376, 2378-2379). Since the rank and file are seasonal employees, control of the Association's affairs, which is vested in a governing board comprised of the officers and members of the labor relations committee, is assured to the supervisors and those closely allied with management (R. 518, 574; 828, 2842, 3000-3001, 3165-3167).

with supervision over at least one assistant (R. 579; 2411-2416, 2453-2455, 3095-3096). *Secretary Roberson* is a clerical employee (R. 579; 2411). The remaining two members of the important labor relations committee are McKeever and Willoughby; the former is an agronomist engaged in crop raising experiments, the latter is the plant storekeeper (R. 578-579; 2413-2415). Like the supervisors and company officials, all receive a monthly salary and are listed on respondent's Los Angeles pay roll as distinguished from the ordinary employees who receive an hourly wage and are carried on the local pay roll (R. 578-579; 2410-2419).

Although claiming to represent 95 percent of the employees, the Association has never requested exclusive recognition, never sought to bargain with the company, and never attempted to secure a collective agreement (R. 575; 2419-2421, 2435-2436); in fact, it has never even appointed the representatives empowered by the bylaws to discuss such matters with respondent (*ibid.*). The only recorded request ever made by the Association occurred on April 5, 1939, after the bylaws were amended to provide that membership in the Association constitutes a repudiation of membership in any other labor organization (R. 574; 2378). At that time respondent was informed by letter that the Association had a number of unemployed members and was requested to "get in touch" with the Association when laborers were required (R. 574; 2611). The Association was quick to point out, however, that this was "merely a request" and that they were not "agitating for a closed shop" (*ibid.*).¹⁸

The Board's findings (R. 575-580) concerning the illegality of the Association and respondent's conduct with respect thereto, cannot be seriously challenged. Respondent's open campaign of interference and intimidation against the Federal which culminated in the eviction of its officers and active members, contrasted with respondent's subsequent acquiescence in the activities of the Association promoters on company time and

¹⁸ It is significant, as the Board points out (R. 573), that the only former Federal members who were employed after the evictions of November 18 were persons who joined the Association (R. 2425-2426).

property, reasonably indicated to the employees, as respondent admittedly intended it should (R. 576; 2601-2603), that the company was backing the project as a further counter measure against the Federal. Moreover, the initiation and promotion of the Association by the same supervisors who took an active part in the campaign of intimidation against the Federal, General Manager Robinson's participation in the preliminary plans and decisions, the use of company time and property, the participation as officers and members of supervisors and those reasonably regarded by the employees as representing the management, the presence of restrictive provisions in the constitution and bylaws, and the Association's complete inactivity as a bargaining agency—all these constitute well recognized indicia and forms of domination and support.

In sum, formed under "conditions or circumstances which the employer created or for which he was fairly responsible and as a result of which it may reasonably be inferred that the employees did not have that complete and unfettered freedom of choice which the Act contemplates" (*N. L. R. B. v. Link-Belt Co.*, 311 U. S. 584, 588), the Association was "not a real bargaining agent or indeed an independent representative of the employees in any respect." *N. L. R. B. v. American Mfg. Co.*, 106 F. (2d) 61, 64 (C. C. A. 2), affirmed, 309 U. S. 629. See also *N. L. R. B. v. American Potash & Chemical Corp.*, 98 F. (2d) 488, 494-495 (C. C. A. 9) cert. denied, 306 U. S. 643; *N. L. R. B. v. Tovrea Packing Co.*, 111 F. (2d) 626 (C. C. A. 9), cert. denied 311 U. S. 668; *H. J. Heinz Co.*, *supra*, 311 U. S. at 517-519, 522, *Machinists case*, *supra*, 311 U. S. at 75-78.

B. The Exchange***The discriminatory discharge of Mrs. Margaret A. Dunn in violation of Section 8 (1) and (3)***

At the time of her discharge on March 1, 1939, Mrs. Dunn had been employed by respondent for 15 years, the last 13 as head telephone operator (R. 586; 2497, 3298). The Board found (R. 599) that respondent discharged Mrs. Dunn in response to pressure of "a group of local citizens who sought Mrs. Dunn's discharge because of her alleged union sympathies and activity," thereby violating Section 8 (1) and (3) of the Act. The facts found by the Board are as follows:

Early in February 1939 Mrs. Dunn's daughter, Dorothy, was observed speaking to Federal members who were picketing the Boswell Company's plant in protest against its unfair labor practices; on subsequent occasions during the month, Dorothy and her sister, Margaret, were also seen talking to Federal Organizer Prior (R. 587-588, 598; 1673-1680, 2501, 2505). The Dunn family soon began to receive information from local citizens that Dorothy was "in the wrong" with the people of Corcoran, particularly with Boswell Company's president, because she had been seen on the picket line, and that a petition was being circulated in Corcoran to induce the Exchange to discharge Mrs. Dunn because her daughters had been seen on the picket line and because of a belief that Mrs. Dunn was conveying to the pickets, through her daughters, information overheard at the Exchange's office (R. 587; 2571, 2676, 2497-2501). About February 15, Mrs. Dunn, who was not a member of any labor organization and had not transmitted messages to the pickets, questioned the

president of the Exchange, Glenn, about the petition for her discharge (R. 587-588; 2500-2502, 2574, 3252-3256). Glenn thereupon assured Mrs. Dunn that he had no intention of discharging her, that her work had been satisfactory for 15 years, and that he was certain the charges against her were without basis (R. 588; 3256-3257, 2501-2503). Perturbed by additional rumors to the same effect, Mrs. Dunn discussed the matter again with Glenn a few days later (R. 588; 2502-2507). On this occasion Glenn wanted to know whether it was true that her daughters "were going out with any of the men," referring to the Federal members (R. 588; 2505).

On March 1 Glenn suddenly demanded Mrs. Dunn's resignation because "pressure was being brought to bear too heavily on him" and he "just couldn't stand what was being said * * * they were certainly awful" (R. 588-589; 2506-2508). To Mrs. Dunn's anxious inquiries as to whether these "awful" things reflected on her personal character or her work, Glenn replied, "absolutely not," and then asked whether her daughter Margaret was "keeping company" with Organizer Prior (R. 589; 2506-2507). Mrs. Dunn refused to resign (R. 589; 2506).

Late that afternoon Mrs. Dunn's husband called upon Glenn and asked what he had against the Dunn family (R. 590; 2560-2561, 2569-2570). Glenn first told Dunn about the "labor trouble" at the Boswell plant, explaining that this was the first step in an effort to organize all agricultural labor in the vicinity; then pointed out that this "labor trouble" and Mrs. Dunn's discharge "all ties in together," that the Dunn girls had been seen

speaking to the Federal pickets at the Boswell plant, that people were saying the girls were carrying messages from their mother, that "they" were very angry and were threatening to ruin Glenn's business unless he discharged Mrs. Dunn (R. 590; 2561-2565, 3266-3269, 3286-3287). Mr. Dunn thereupon accused Glenn of succumbing to community pressure because of his interests as a farmer (R. 590-591; 2564, 3271-3273).¹⁹

The next morning, March 2, Glenn discharged Mrs. Dunn, informing her that she was ill, too old for the work, and that "there had been complaints made about the service" (R. 589-590; 2547-2550, 2548). Realizing that he had previously made damaging admissions to Mr. Dunn respecting the true reasons for the discharge, Glenn then sought out Mr. Dunn and attempted to persuade him that his wife was discharged for the reasons assigned to her and not for those advanced the preceding day (R. 591; 2565-2567). During the conversation, however, Glenn admitted that nine men had called upon him and demanded the discharge of Mrs. Dunn (R. 591; 2567-2568, 3287-3289, 3271-3272. See also 2508-2511).

At the hearing the Exchange contended that Mrs. Dunn was discharged because of (1) her physical condition, (2) her alleged habit of drinking wine while at work, (3) her alleged dissension with other employees, and (4) alleged complaints from subscribers about her

¹⁹ Glenn, whose principal occupation is farming, is a member of the Associated Farmers and operates a 5,200-acre grain and cotton farm financed by Boswell Company, to whom he was at that time indebted for crop loans to the extent of approximately \$30,000 (R. 586; 2478-2483).

work (R. 592-593). In view of the fact that Glenn had been aware of Mrs. Dunn's physical condition for a long time without commenting thereon (R. 593; 3226-3229, 3238), that Glenn recognized that whatever dissension existed among the operators was probably due to his failure to instruct them clearly as to which one had supervisory authority (R. 594-595; 2567, 3298), that he had received complaints about all the operators and recognized that faulty equipment was a chief cause of unsatisfactory service at that time (R. 595-596; 3290-3295, 3299-3300), that he admitted in February and March 1939 that Mrs. Dunn's work was satisfactory (R. 598, *supra*, pp. 35-36), and that he had first decided upon her discharge after her daughters' visits to the picket line (R. 598-599; 3301. Cf. 2545, 3248, 3250-3251, 3290-3300), the Board properly rejected respondent's defenses as being without merit. Cf. *N. L. R. B. v. Bank of America*, 11 L. R. R. 119, 120-121 (C. C. A. 9), decided September 14, 1942.

"The explanation of the discharge offered by respondent did not stand up under scrutiny. This fact in itself strengthens the inference drawn by the Board from the other facts in the case" (*N. L. R. B. v. Abbott Worsted Mills*, 127 F. (2d) 438, 440 (C. C. A. 1)) that, in response to "pressure," respondent discharged Mrs. Dunn because of her alleged union sympathies and activities. That a discharge of a non-union employee because of a mistaken belief that he was sympathetic to, or active in, a union violates Section 8 (1) and (3) of the Act has been recognized by the highest authority. *N. L. R. B. v. Link-Belt Co.*, 311 U. S. 584, 589-590; *N. L. R. B. v. Remington Rand, Inc.*, 94 F. (2d) 862,

871 (C. C. A. 2), cert. denied 304 U. S. 576. See also *N. L. R. B. v. Bank of America*, 11 L. R. R. 119, 121 (C. C. A. 9); *Mooreville Cotton Mills v. N. L. R. B.*, 94 F. (2d) 61, 65 (C. C. A. 4); *Mexia Textile Mills v. N. L. R. B.*, 110 F. (2d) 565, 566 (C. C. A. 5); *N. L. R. B. v. Vincennes Steel Corp.*, 117 F. (2d) 169, 173 (C. C. A. 7); *Rapid Roller Co. v. N. L. R. B.*, 126 F. (2d) 452 (C. C. A. 7). The fact that the alleged union activity extends "outside his own employment," is immaterial. *Fort Wayne Corrugated Paper Co. v. N. L. R. B.*, 111 F. (2d) 869, 874 (C. C. A. 7), cf. *N. L. R. B. v. Peter Caillier Kohler Swiss Chocolates Co.*, 10 L. R. R. 742 (C. C. A. 2), decided July 16, 1942.

Nor is it material, as respondent contended before the Board, that there was no independent evidence to show that Mrs. Dunn was either discouraged (or encouraged) from joining a labor organization. The Board expressly found (R. 599) that Mrs. Dunn's discharge did discourage "membership in the Federal as well as in labor organizations generally." The Board's position that such discrimination necessarily discourages union membership—at the very least that of the discharged employees—and that therefore such discharge is *ipso facto* a violation of Section 8 (3), has been uniformly upheld by the Supreme Court. *Associated Press v. N. L. R. B.*, 301 U. S. 103, 129; *N. L. R. B. v. Fansteel Metallurgical Corp.*, 306 U. S. 240, 255; *Phelps Dodge Corp. v. N. L. R. B.*, 313 U. S. 177;²⁰ *N. L. R. B. v. Link-*

²⁰ In the *Phelps Dodge* case, the court declared that "the refusal to hire Curtis and Daugherty solely because of their affiliation with the Union was an unfair labor practice under § 8 (3)" (at p. 187); that "discrimination in hiring [is] an 'unfair labor prac-

Belt Co., 311 U. S. 584, 589, 598, 600, 603.²¹ See also S. Rep. No. 573, 74th Cong., 1st Sess., p. 11; H. Rep. No. 1147, 74th Cong., 1st Sess., p. 19. The only circuit court of appeals which ever expressed a contrary view (*Stone-wall Cotton Mills, Inc.*, v. *N. L. R. B.*, 129 F. (2d) 629 (C. C. A. 5)), subsequently reversed its position on the Board's petition for rehearing and held that the Board properly inferred that a discriminatory discharge had the effect of discouraging union membership despite the absence of any "positive evidence" that it had such effect (129 F. (2d) at 633).

POINT III

The Board's order is valid and proper

The cease and desist provisions of the Board's order are mandatory under the Act as to the unfair labor practices found. *N. L. R. B. v. Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261, 265. The provisions

“*vice*” (at p. 181); that “it is no longer disputed that workers cannot be dismissed from employment because of their union affiliations” (at p. 183); that “in refusing employment to the two men because of their union affiliations Phelps Dodge violated the Act” (at p. 185). The court recognized that antiunion discrimination inevitably discourages union membership, for it stated (at p. 185): “The effect of such discrimination is not confined to the actual denial of employment; it inevitably operates against the whole idea of the legitimacy of organization.” And further (at p. 186), “We have seen the close link between a bar to employment because of union affiliation and the opportunities of labor organizations to exist and to prosper.”

²¹ In the *Link-Belt* case, the court expressly recognized that the discriminatory discharge of a member of the Amalgamated “would tend to have as potent an effect as direct statements to the employees that they could not afford to risk selection of Amalgamated” (at p. 598).

of the order, restraining respondents from "in any other manner" interfering with, restraining, or coercing their employees' exercise of the rights guaranteed in Section 7 of the Act, are proper upon the findings in this case. See, e. g., *N. L. R. B. v. Nevada Consolidated Copper Corp.*, 316 U. S. 105, enforcing 26 N. L. R. B. 1182, 1235; *N. L. R. B. v. Electric Vacuum Cleaner Co.*, 315 U. S. 685, enforcing 18 N. L. R. B. 591, 640; *N. L. R. B. v. Hollywood-Maxwell Co.*, 126 F. (2d) 815, 819 (C. C. A. 9); *N. L. R. B. v. Pacific Gas & Electric Co.*, 118 F. (2d) 780, 789 (C. C. A. 9).

The affirmative provision of the Board's order requiring Boswell Company to afford its employees reasonable protection in its plant from physical interruption of their work and physical assaults or threats thereof directed at discouraging union membership, is "adapted to the situation which calls for redress" (*N. L. R. B. v. Mackay Radio & Telegraph Co.*, 304 U. S. 333, 348); it is plainly necessary to expunge the effects of Boswell Company's unfair labor practices and to "assure to [its] employees the rights which the statute undertakes to safeguard" *Republic Steel Corp. v. N. L. R. B.*, 311 U. S. 7, 12; *International Ass'n of Machinists v. N. L. R. B.*, 311 U. S. 72, 82; *N. L. R. B. v. Link-Belt Co.*, 311 U. S. 584, 600; *Phelps Dodge Corp. v. N. L. R. B.* 313 U. S. 177, 193-195; *N. L. R. B. v. Hudson Motor Co.*, 128 F. (2d) 528, 533 (C. C. A. 6). Similar provisions have been uniformly enforced by the courts. *N. L. R. B. v. Ford Motor Co.*, 119 F. (2d) 326 (C. C. A. 5); *N. L. R. B. v. Goodyear Tire & Rubber Co.*, 129 F. (2d) 661, 667 (C. C. A. 5), enforcing 21

N. L. R. B. 306, 407; *N. L. R. B. v. Riverside Mfg. Co.*, 119 F. (2d) 302 (C. C. A. 5), enforcing 20 N. L. R. B. 394, 422; *N. L. R. B. v. General Motors Corp.*, 116 F. (2d) 306, 311 (C. C. A. 7).

The validity of the provisions of the Board's order requiring Boswell Company to refuse to recognize the Association for collective bargaining purposes, and directing both respondents to reinstate with back pay the discriminatorily discharged employees and to post appropriate notices, is well established and requires no citation of authorities.

Although the Board dismissed the allegations in the complaint that Boswell Company had discriminated in the hire and tenure of employment of James Gilmore, Boyd Ely, Walter Winslow, W. R. Johnston, Stephen J. Griffin, and Eugene Clark Ely (R. 622), the Board ordered Boswell Company to place their names upon a preferential list of temporarily laid off employees in accordance with its usual seniority practices and to offer them employment to their former or substantially equivalent positions as such employment becomes available and before hiring other persons for such work (R. 619). In view of Boswell Company's multiple violations of the Act and strenuous hostility toward the Federal and its members, the Board properly concluded (R. 619) that there is grave danger that the employees in question may be refused reemployment so long as they remain members of the Federal even if their former or substantially equivalent positions are available. This requirement is valid as a reasonable exercise of the Board's "informed discretion" as to the appropriate

remedy necessary to expunge the effects of prior unfair labor practices. *Phelps Dodge Corp., Machinists, Pennsylvania Greyhound Lines, Inc.*, cases, *supra*. As the Eighth Circuit Court of Appeals stated in upholding an identical provision in *N. L. R. B. v. C. Nelson Mfg. Co.*, 120 F. (2d) 444, 447,

* * * We think that the Board was justified in holding as it did, that the respondent had engaged in some unfair labor practices. The Board exonerated the respondent from some of the charges but not all of them. Whether the requirement as to continuing the nineteen men [as to whom the Board had dismissed the complaint] on the preferential list would or would not "effectuate the policies of the Act" was a matter peculiarly within the province of the Board to determine.

Boswell Company also contends that some of the employees are not entitled to reinstatement because they obtained substantially equivalent employment. Aside from the fact that the Board found (R. 606, 611-613) upon substantial evidence (R. 982-983, 1016-1019, 1755-1757, 1843-1846, 1867-1869) that the new employment was not substantially equivalent to the old, respondents' contention is foreclosed by *Phelps Dodge Corp. v. N. L. R. B.*, 313 U. S. 177, 196. In accordance with the ruling in the *Phelps Dodge* case, the Board has exercised its discretion on this question (R. 606-607, 613).

In their answer to the Board's petition for enforcement, respondents assert (R. 686) that the Board is guilty of "nonfeasance and neglect of duty," and that

the order is void, because the Board failed to introduce evidence and make findings on the question of whether any of the employees made "any reasonable effort to obtain other employment." While it is true that the Board should order deductions from back pay on account of "clearly unjustifiable refusal to take desirable new employment", the matter of showing a basis for such deductions is an affirmative defense which must be put in issue by respondents and is in no sense a part of the Board's case. *Phelps Dodge* case, *supra*, 313 U. S. at 199-200. Respondents do not contend that they were at any point precluded from "going to proof on this issue" (*id.*, at 200). No such issue was raised affirmatively by respondents either in their pleadings, at the hearing, in their exceptions to the Trial Examiner's intermediate report which recommended reinstatement with back pay, or in their briefs in support of said exceptions. Although the *Phelps Dodge* decision was rendered approximately 6 months before that in the instant case, respondents at no time contended before the Board that any employee had wilfully incurred losses which should be deducted. Not having objected on this ground when the matter was before the Board, respondents are now barred by Section 10 (e) of the Act from raising the point. *N. L. R. B. v. Bradford Dyeing Ass'n*, 310 U. S. 318, 341; *N. L. R. B. v. National Motor Bearing Co.*, 105 F. (2d) 652, 662 (C. C. A. 9); *N. L. R. B. v. Grower-Shipper Vegetable Ass'n*, 122 F. (2d) 368, 378 (C. C. A. 9); *N. L. R. B. v. Sunshine Mining Co.*, 110 F. (2d) 780, 790 (C. C. A. 9), cert. den. 312 U. S. 678; *N. L. R. B. v. Baldwin Locomotive Works*, 128 F. (2d) 39, 50 (C. C. A. 3); cf.

Corning Glass Works v. N. L. R. B., 118 F. (2d) 625, 629-630 (C. C. A. 2).

There is no merit to respondents' further contention (R. 684-685, 689-691) that the Board has been guilty of laches because of the time involved in deciding this case and in instituting enforcement proceedings. Aside from the fact that a defense of laches is not available in a proceeding brought by an agency of the Federal Government,²² "the statute contains no time-limit mandate to the National Labor Relations Board for the rendering of its decisions." *Triplex Screw Co. v. N. L. R. B.*, 117 F. (2d) 858, 862 (C. C. A. 6); *N. L. R. B. v. Wilson Line*, 122 F. (2d) 809, 815 (C. C. A. 3). Furthermore, respondents need not have waited until the Board asked for an enforcement order, [*Wilson case, supra*; *N. L. R. B. v. Aluminum Products Co.*, 120 F. (2d) 567, 573 (C. C. A. 7); *N. L. R. B. v. Isthmian Steamship Co.*, 126 F. (2d) 598, 601 (C. C. A. 2)]; they had a right to petition this Court for a review of that order had they desired to do so. Section 10 (f) of the Act.

At any event, any delay on the Board's part was not capricious, and the Board is not guilty of "nonfeasance and neglect of duty," as respondents contend. The fourth amended charge, which is the basis for the complaint herein, was filed on May 4, 1939 (R. 500; 11); 2 days later the Board issued its amended complaint, and the hearing before the Trial Examiner was there-

²² *Chesapeake & Delaware Canal Co. v. United States*, 250 U. S. 123; *Board of County Commissioners of the County of Jackson, Kansas v. United States*, 308 U. S. 343; *N. L. R. B. v. Nebel Knitting Co.*, 103 F. (2d) 594 (C. C. A. 4).

after held from May 18 to June 16, 1939 (R. 500, 503). The record covered more than 2,900 typewritten pages, as well as many exhibits (R. 693-3341). After the Trial Examiner had filed his Intermediate Report, respondents sought and secured extensions of time within which to file exceptions and briefs. Considering the same factors of crowded dockets²³ and inadequate personnel which are present in courts of record, it cannot be said that there was "unnecessary delay on the part of the Board." *N. L. R. B. v. National Casket Company*, 107 F. (2d) 992, 995 (C. C. A. 2); *N. L. R. B. v. Grower-Shipper Vegetable Ass'n*, 122 F. (2d) 368, 379 (C. C. A. 9); *Wilson and Isthmian cases supra*. On this record there can be no equity in imposing the burden of delay upon the persons whom respondents discriminatorily deprived of their jobs; respondents have no just cause for complaint on this score. *N. L. R. B. v. Electric Vacuum Co.*, 315 U. S. 685, 697-698; *Phelps Dodge Corp. v. N. L. R. B.*, 113 F. (2d) 202, 206, *aff'd* on this point 313 U. S. 177; *Grower-Shipper Vegetable case, supra*; *N. L. R. B. v. Wilson Line*, 122 F. (2d) 809, 815-816 (C. C. A. 3); *N. L. R. B. v. Superior Tanning Company*, 117 F. (2d) 881, 892 (C. C. A. 7).

²³ On July 1, 1939, 4,113 cases were before the Board in various stages, and 6,177 cases were received by the Board between July 1, 1939, and June 30, 1940, making a total of 10,290 cases on the Board's docket during its fiscal year from July 1, 1939, to June 30, 1940. (Fifth Annual Report of the National Labor Relations Board, G. P. O., p. 20). During its fiscal year ending June 30, 1941, the Board received an additional 9,151 cases; and during the balance of that calendar year up to the date of issuance of the Board's decision and order in the instant case, the Board received more than 1,700 new cases. (Sixth Annual Report of the National Labor Relations Board, G. P. O., p. 21).

CONCLUSION

It is respectfully submitted that the Act is applicable to respondents, that the Board's findings are supported by substantial evidence, that its order is valid and proper, and that a decree should issue affirming and enforcing said order.

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OCTOBER 1942.

APPENDIX

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449; 29 U. S. C., Supp. V., Sec. 151 et seq.) are as follows:

Sec. 2. When used in this Act—

(3) The term “employee” shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse.

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(6) The term “commerce” means trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country.

(7) The term “affecting commerce” means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a

labor dispute burdening or obstructing commerce or the free flow of commerce.

Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

Sec. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it * * *

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization * * *

Sec. 10 (e) * * * No objection that has not been urged before the Board, its member, agent or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. * * *

No. 10148

**In the United States Circuit Court of Appeals
for the Ninth Circuit**

**NATIONAL LABOR RELATIONS BOARD,
PETITIONER**

v.

**J. G. BOSWELL COMPANY AND CORCORAN
TELEPHONE EXCHANGE, RESPONDENTS**

**ON PETITION FOR ENFORCEMENT OF AN ORDER OF THE
NATIONAL LABOR RELATIONS BOARD**

BRIEF FOR RESPONDENTS

**SIDNEY J. W. SHARP,
M. WINGROVE,**

**Hanford, California,
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FILED

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CLERK**

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In The United States Circuit Court of Appeals For the Ninth Circuit

No. 10148

**NATIONAL LABOR RELATIONS BOARD,
Petitioner**

v.

**J. G. BOSWELL COMPANY and CORCORAN
TELEPHONE EXCHANGE, Respondents**

**On Petition for Enforcement of an Order of the
National Labor Relations Board**

BRIEF FOR RESPONDENTS

PRELIMINARY STATEMENT

The case is an original proceeding in this Court on the petition of the National Labor Relations Board for an order of enforcement.

The original charge in this case which was against respondent J. G. Boswell Company alone, herein called Boswell Company, was filed November 21, 1938, by E. F. Prior of the California State Council of Soap and Edible Oil Workers, A. F. of L. with the Regional Director for the Twentieth Region (San Francisco, California). The Board thereafter ordered the case transferred to and continued in the Twenty-first Region (Los Angeles, California). The original charge was never served on said respondent. An amended charge against said respondent was filed by E. F. Prior

January 17, 1939, but was never served. A second amended charge against said respondent was filed by A. H. Petersen of the A. F. L. February 6, 1939, but was never served. A third amended charge against said respondent and Associated Farmers of Kings County, Inc. was filed March 4, 1939, and on said date the original complaint was issued and an order was made setting the case for hearing on March 13, 1939. After the case had been set for hearing, the matter was indefinitely continued by order of the acting Regional Director, Twenty-first Region, dated March 6, 1939, without any reasons given therefor. Thereafter on May 4, 1938, a fourth amended charge was filed by E. F. Prior against respondent Boswell Company, respondent Associated Farmers of Kings County, Inc., and respondent Corcoran Telephone Exchange, herein called Exchange. This fourth amended charge, as well as most of the previously amended charges, was filed by Cotton Products and Grain Mill Workers Union, Local No. 21798, A. F. L., and was signed by E. F. Prior, Business representative. (R. 3; 11). On May 6, 1939 the case was set for hearing and an amended complaint was issued against all three of said respondents, and an order was made setting the case for hearing on May 18, 1939. (R. 11; 26). The hearing before the Trial Examiner was concluded June 16, 1939. The Intermediate Report was issued by the Trial Examiner January 11, 1940 and was served on respondents Boswell Company and the Exchange on January 25, 1940. On or about March 15, 1940 the respondents served and filed their exceptions to the Intermediate Report, and

on March 20, 1940 filed a brief with the Board. The Board's purported Decision and Order was made September 29, 1941 and was received by respondents Boswell Company and the Exchange on October 1, 1941. The Petition for enforcement of such purported order and decision was filed with this Court on May 27, 1942.

The Board in its purported Decision and Order found that the respondent Associated Farmers of Kings County, Inc. had not engaged in unfair labor practices within the meaning of Sections 8 (1), (3) and (4) of the National Labor Relations Act, herein called the Act, and dismissed the complaint as to said respondent. The Trial Examiner in his Intermediate Report and the Board in its purported Decision and Order dismissed certain of the charges contained in the amended complaint upon which the case went to hearing as to the respondents Boswell Company and Exchange. We will, therefore, confine ourselves in this brief only to those charges and matters upon which the Board found and held adversely to respondents Boswell Company and Exchange.

Paragraph 1 of the Amended Complaint (R. 11; Board's Exhibit No. 1-8) alleged that the Boswell Company was a California corporation engaged in the business of growing and financing the growing of cotton, feeding cattle, ginning and baling cotton, extracting cottonseed oil from cotton seed, and processing, selling and distributing cotton, cottonseed oil and cottonseed cake and meal. It was also alleged that the Boswell Company operated offices gins and oil mills at certain named locations in California and in Arizona. The

Boswell Company in its answer admitted in substance those allegations with certain corrections as to the location of its offices and plants.

Paragraph 3 of the Amended Complaint alleged that the Exchange was a California corporation engaged in operating a telephone system and transmitting and receiving telephonic communications in Corcoran, California, and that it owned and operated lines and cables which connected with lines and cables of Pacific Telephone & Telegraph Company, and that through such connections the Exchange transmitted telephonic communications in interstate commerce. The Exchange in its answer admitted that it was a California corporation and was engaged in the business of operating a telephone system, transmitting and receiving telephonic communications in Corcoran, California. It admitted that it owned and operated lines and cables which connected with lines and cables of Pacific Telephone & Telegraph Company and that it transmitted telephonic communications in interstate commerce through such connections, but alleged that no substantial amount or number of telephonic communications transmitted over its system were transmitted in interstate commerce and that the total number and amount of telephonic communications which were transmitted over its system in interstate commerce was considerably less than 1% of the number and amount of toll messages handled through its system.

Paragraph 4 of the Amended Complaint alleged that the Boswell Company in its business caused large quantities of materials, consisting of burlap and metal

bands to be purchased and transported in interstate and foreign commerce to Corcoran and caused in excess of 50% of all cotton, cottonseed oil, cottonseed cake and meal purchased, processed, produced and baled by it to be transported in interstate and foreign commerce. Boswell Company admitted that it caused large quantities of materials, consisting of burlap and metal bands, to be purchased and transported in interstate and foreign commerce to Corcoran but denied all the remainder of paragraph 4.

Paragraphs 6 and 7 of the Amended Complaint alleged that the Boswell Company engaged in unfair labor practices within the meaning of Section 8 (1) of the Act by criticizing and condemning the Union through alleged supervisory employees. Boswell Company denied the allegations in said paragraphs and alleged that if any such acts or statements were done or made they were unauthorized and were not expressions of the Boswell Company.

Paragraphs 8 to 14 of the Amended Complaint as amended during the hearing alleged that the Boswell Company engaged in unfair labor practices within the meaning of Section 8 (1) and (3) of the Act in doing the following acts because of the union activities of the employees hereinafter mentioned:

1. It discharged James W. Gilmore on or about March 20, 1938 and refused to reinstate him on or about July 1, 1938.

2. It discharged W. R. Johnston, Stephen J. Griffin and Elmer Eller on or about November 17, 1938.

3. It discharged Eugene Clark Ely on or about January 30, 1939.

4. It shut down the oil mill and locked out Boyd Ely and Walter Winslow on or about November 15, 1938 and refused to re-employ them when the oil mill re-opened on or about January 6, 1939.

5. It reduced the wages of L. E. Ely from 40c to 35c per hour on or about November 13, 1938 and refused to re-employ him on or about December 2, 1938.

6. It encouraged and permitted an anti-union demonstration at its plant on or about November 18, 1938 and permitted employees and supervisory employees to drive George J. Andrade, Joe Briley, O. L. Farr, R. K. Martin, E. C. Powell, L. A. Spear and H. N. Wingo from their work, and it failed to reinstate them on or about November 19, 1938.

The Boswell Company denied all of the foregoing allegations and alleged that Johnston, Griffin and Eller were employed in seasonal work; that there was a very short ginning season in 1938; that as a result its ginning operations were curtailed earlier than normal and that those men were laid off solely by reason of the seasonal decline in operations. It also alleged that Eugene Clark Ely left its employ on January 30, 1939 of his own free will and while work was still available to him and that he was neither laid off nor discharged.

In Paragraphs 15 to 19 of the Amended Complaint it was alleged that the Boswell Company engaged in unfair labor practices within the meaning of Sections 8 (1) and (2) of the Act by forming at its Corcoran

plant a labor organization known as "J. G. Boswell Company Employees Association of Corcoran and Tipton," hereinafter called the Association, through supervisory employees, who actively participated in the formation, and became officers and members of the Association. It was also alleged that said respondent dominated and interfered with the Association by permitting the Association to hold meetings at the plant, by threatening employees with loss of employment if they did not join the Association, by increasing wages and the amount of employment of members of the Association, and by soliciting members during working hours. The Boswell Company denied all of those allegations.

Paragraph 20 of the Amended Complaint alleged that because of the alleged unfair labor practices, the Cotton Products and Grain Mill Workers Union, Local No. 21798 A. F. L., hereinafter called the "Federal," instituted a boycott about January 20, 1939 and stationed pickets at the Boswell plant, and that said activities were being carried on at the time of the issuance of the complaint on May 6, 1939. The Boswell Company denied that it engaged in any unfair labor practices, but admitted the existence of the boycott and picket lines.

Paragraphs 24 to 26 of the Amended Complaint alleged that respondents Boswell Company and Exchange restrained the Boswell Company employees in their rights under Section 7 of the Act, and engaged in unfair labor practices within the meaning of Sections 8 (1) and (3) by discharging and causing to be

discharged Margaret A. Dunn from her employment with the Exchange, because they **suspected** her of engaging in union activities. It was alleged that respondent Exchange acted directly and indirectly in the interest of the Boswell Company in discharging, and causing to be discharged, Margaret A. Dunn. Both respondents denied the foregoing allegation.

Paragraph 29 of the Amended Complaint alleged that the Exchange by refusing to reinstate said Margaret A. Dunn on or about March 14, 1939 to her regular position of employment with the Exchange restrained and coerced employees in the exercise of rights guaranteed in Section 7 of the Act, and thereby engaged in unfair labor practices within the meaning of Section 8 (1) of the Act. The Exchange admitted that it refused to reinstate, or permit the reinstatement of Margaret A. Dunn on or about March 14, 1939, and alleged that the sole and only reason for the refusal to reinstate her was that her employment had previously been terminated for good cause. It also denied that it had engaged in any unfair labor practices. The Boswell Company denied these allegations of the Amended Complaint and alleged that whatever acts or things were done by the Exchange were done independently of and without the knowledge of the Boswell Company and denied that the Exchange ever acted directly or indirectly in the interest of the Boswell Company.

Paragraphs 32 and 35 of the Amended Complaint alleged that the foregoing alleged acts of the Boswell Company constituted unfair labor practices within

the meaning of Sections 8 (1), (2), and (3) and Sections 2 (6) and (7) of the Act, and that those acts had a close, intimate and substantial relation to interstate and foreign commerce and tended to lead to labor disputes burdening interstate commerce. The Boswell Company denied these allegations.

Paragraphs 34 and 37 of the Amended Complaint alleged that the alleged acts of the Exchange set forth in the complaint constituted unfair labor practices affecting commerce within the meaning of Sections 8 (1) and (3) and Sections 2 (6) and (7) of the Act, and that said acts occurring in connection with the operations of the Exchange and the operations of Boswell Company had a close, intimate and substantial relation to interstate commerce and tended to lead to labor disputes burdening and obstructing the free flow of commerce. The Exchange denied the foregoing allegations, and Boswell Company denied these allegations upon lack of knowledge.

Upon their first appearance in the case the Boswell Company and the Exchange each filed its objections to the jurisdiction of the Board and denied it was subject to the Act by filing a motion to dismiss the charges on the following grounds:

That no act of the respondent or to which the respondent is a party is in commerce or affects commerce or burdens or obstructs commerce or the free flow of commerce or had led or tended to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce, and upon the further

ground that the Board had no jurisdiction over the respondent. (R. 726; 729)

Upon the opening of the hearing before the Trial Examiner each of said respondents stated its said objections to the jurisdiction of the Board, and moved that the proceedings be dismissed as to each of said respondents on said grounds. The Trial Examiner denied each of said motions. At the conclusion of the testimony offered by the Board respondent Corcoran Telephone Exchange renewed its said objections and motions on all of the grounds stated in its written motion to dismiss, and upon the further ground that Mrs. Dunn herself testified that she was not a member of any labor organization and had never engaged in any union activities, and that any redress so far as she is concerned is beyond the scope of the Act. This motion was likewise denied by the Trial Examiner. At the conclusion of the hearing before the Trial Examiner respondent Corcoran Telephone Exchange renewed its said objections and motions by moving to strike out all of the testimony adduced on behalf of the Board purportedly in support of the complaint against said respondent on the ground that the Board had no jurisdiction over said respondent or its business in that it had not been shown that said respondent is engaged in interstate commerce, nor that the conduct of its business in any manner affected interstate commerce; and upon the further ground that there had been no showing in the case that Mrs. Dunn is a person who ever joined a labor organization, or assisted one, or in any manner attempted to assist

one, and that, therefore, she is not a person to whom the rights referred to in Section 7 and Section 8 (1) of the Act are secured. This motion was taken under advisement, and the Trial Examiner in the Intermediate Report denied said motion. The Board in its purported Decision and purported Order affirmed the overruling by the Trial Examiner of the objections made by said respondents and the denial of said motions.

In their exceptions to the Intermediate Report of the Trial Examiner the respondents renewed their objections to the jurisdiction of the Board and excepted to the rulings of the Trial Examiner in denying their motions made at the time of the hearing.

In their answer filed with this Court to the petition of the Board for an order of enforcement respondents have again pleaded and asserted the defenses that they are not, and neither of them is, subject to the Act, and that the Board was and is without jurisdiction and they have, and each of them has, moved this Court for an order of dismissal of the petition.

By this brief the respondents again assert that they are not, and neither of them is, subject to the Act and renew their objections to the attempted jurisdiction of the Board, and move that the petition of the Board for an order of enforcement be dismissed.

Expressly reserving their objections to the jurisdiction of the Board, respondents have also resisted the proceedings on their merits.

The Board in its purported Decision and Order absolved Respondent Boswell Company from any and

all responsibility with respect to the discharge by the Exchange of Margaret A. Dunn. The Board also dismissed the Amended Complaint insofar as it alleged that Boswell Company engaged in unfair labor practices within the meaning of Section 8 (3) of the Act with respect to Gilmore, Boyd Ely, Winslow, Johnston, Griffin, Eugene Clark Ely and Elmer Eller. The Board held, however, that both respondents had interfered with, restrained and coerced their employees in the exercise of the rights guaranteed in Section 7 of the Act, and had engaged in unfair labor practices within the meaning of Section 8 (1) of the Act; that respondent Boswell Company had dominated and interfered with the formation and administration of the Association and by contributing financial and other support thereto had engaged in unfair labor practices within the meaning of Section 8 (2) of the Act; and that both the Boswell Company and the Exchange had engaged in unfair labor practices within the meaning of Section 8 (3) of the Act by discriminating in regard to the hire and tenure of employment of their employees and thereby discouraged membership in the Federal; and that said unfair labor practices are unfair labor practices affecting commerce, within the meaning of Section 2 (6) and (7) of the Act.

The Board, however, did not find that the Exchange in discharging Mrs. Dunn acted either directly or indirectly in the interest of the Boswell Company.

The Board with respect to Boswell Company made a cease and desist order and ordered said respondent

to reinstate Spear, Martin, Wingo, Andrade, Farr, Powell, and Elgin Ely and to pay each of them as back wages a sum of money equal to that which he would normally have earned as wages from the date of discrimination to the date of said respondent's offer of reinstatement, less his net earnings during such portions of said period when he would normally have been working for said respondent; and less any sums already paid to him by said respondent for days of work subsequent to November 18, 1938, when he was not actually working at its plant.

The Board ordered Gilmore, Boyd Ely, Winslow, Johnston, Griffin and Eugene Clark Ely placed upon a preferential hiring list. The Board also ordered that the Boswell Company refuse to recognize the Association as the representative of any of its employees for the purpose of dealing with said respondent concerning wage and employment matters and that said respondent post notices of compliance. The Board also ordered that the Exchange immediately reinstate Mrs. Dunn with back pay and post notices of compliance.

In addition to the jurisdictional question herein above mentioned and which is hereinafter more fully discussed, each of the respondents contends that the findings that it violated the Act and that the Board's cease and desist order and order for affirmative action are and each of them is (a) contrary to fact; (b) contrary to law, and (c) not supported by substantial evidence.

In their answer to the Board's petition for an

order of enforcement each of the respondents has alleged by way of special defenses:

1. That the Board has been and is guilty of non-feasance and neglect of duty in that it failed for a period of approximately eight months after the date of its purported Decision and Order to take any action for the enforcement thereof.

(a) Said purported Order of the Board was made at a time so remote from the present that it is impossible to ascertain from the record the present status of any of the alleged employees of the respondents for whose benefit said purported Order runs;

(b) It is impossible to ascertain from the record or otherwise what any of the alleged employees of respondent J. G. Boswell Company would normally have earned as wages from said respondent subsequent to the date of termination of his employment.

(c) It is impossible to ascertain from the record what, if any, other employment said alleged employees of each of the respondents have received from or after the time of the close of the hearing before the Trial Examiner in said case.

(d) It is impossible to ascertain whether or not any of said alleged employees have received employment substantially equivalent to that held by them with the respective respondents before the termination of their employment.

(e) It is impossible to determine from the record what efforts, if any, said alleged employees, or any of them, have made to secure other and substantially equivalent employment to that held by them with the

respective respondents at any time since the termination of their employment with the respective respondents.

2. That the Board has been and is guilty of nonfeasance and neglect of duty in that it failed to take any evidence on the question of whether or not any of the said alleged employees of either respondent made any effort to obtain other or substantially equivalent employment after the termination of their employment by the respective respondents; and that such failure has voided the purported Order of the Board.

3. That the proceeding was not prosecuted fairly and impartially and in good faith, and the Intermediate Report of the Trial Examiner and the purported Order and Decision of the Board is contrary to law and void by reason of misconduct and misfeasances of the Trial Examiner; and

4. That the Board has been and is guilty of nonfeasance and neglect of duty in that it unduly delayed the prosecution of the case with the result that the respondents will be greatly prejudiced should the court grant the Board's petition for the enforcement of its purported Orders.

I.

THE JURISDICTIONAL ISSUES

(A) J. G. BOSWELL COMPANY.

The only evidence relating to the nature of the business carried on by the Boswell Company was a

stipulation entered into between the attorneys for the Board and the attorneys for said respondent. (R. 715; Board's Exhibit No. 2). This stipulation set forth the nature and extent of the respondent's operations only during the fiscal year from July 1, 1937, to June 30, 1938. There was no stipulation, however, that said respondent was within the jurisdiction of the Board or that it was engaged in commerce within the meaning of the Act or that any activities of said respondent affected commerce within the meaning of the Act. None of the matters involved in this proceeding occurred during the period of time covered by the stipulation nor was a showing of any nature made regarding the business carried on by said respondent at any of the times involved in this proceeding. Neither was there any showing that any of the operations here in issue were related to interstate commerce or could have in any manner affected, obstructed or burdened interstate commerce within the meaning of the Act.

(B) CORCORAN TELEPHONE EXCHANGE

Respondent Exchange is a California corporation which transacts all of its business and carries on all of its operations exclusively within the city limits of Corcoran, California (R. 2461; 2485). It has only about 300 subscribers (R. 2493). It is a purely local telephone exchange, entirely separate and independent from Pacific Telephone & Telegraph Company and from American Telephone & Telegraph Company. All of the cables and wires of said respondent are within the city limits of Corcoran and it has no subscribers

for its service outside of that city. Pacific Telephone & Telegraph Company maintains a cable, containing six or seven wires, into the City of Corcoran from points outside of the city. That company has connected its cables to the switchboard owned by respondent Exchange, and those cables are owned, maintained and repaired by Pacific Telephone & Telegraph Company without any participation therein by respondent Exchange (R. 3221, 3222). An operating agreement has been entered into between respondent Exchange and Pacific Telephone & Telegraph Company whereby persons wishing to call points outside of the City of Corcoran may be connected with the cable of Pacific Telephone & Telegraph Company, and, through the facilities of the latter company, may make long distance calls. In consideration for the privilege granted by the Exchange to Pacific Telephone & Telegraph Company, respondent Exchange receives 30% of the tolls on outgoing calls over the Pacific Telephone & Telegraph Company cables, and the latter company retains the remaining 70%. The Exchange receives nothing upon incoming calls unless they happen to be collect calls. (R. 2016; 2017).

During the fiscal year 1938 the gross income of respondent Exchange was \$15,897.39. This included income from subscribers and toll calls which are the only sources of income. This gross income, however, included taxes in the amount of \$937.35 collected on toll calls (R. 2471), which made the gross income from subscribers and toll calls only the sum of \$14,960.04 (R. 2471; 2472). Of this revenue, \$5,248.48 was the

amount the Exchange received from toll calls over the facilities of Pacific Telephone & Telegraph Company (R. 2472). Although some of the toll calls handled by the Exchange went out of state the total charges for such out of state calls was only \$177.13 (R. 2472; 2487; 2488). Said sum of \$177.13 was approximately $3\frac{1}{3}\%$ of the total amount received for toll calls during that year (R. 2472; 2473). However, the Exchange, under its working agreement with Pacific Telephone & Telegraph Company, received only thirty per cent of the sum of \$177.13 or \$53.14 (R. 2487; 2488; 2490). On a value basis, this would be approximately one per cent of the total sum of \$5,248.48 received for toll calls during the year, and would be approximately one-third of one per cent (.0355) of the gross income of \$14,960.04.

In 1938 the total number of toll calls which went through the Exchange was 35,558, and of this number 77 were out of state calls (R. 2474). This however, did not include innumerable local calls handled by the Exchange, no record of which was kept (R. 2489). These 77 out of state calls were approximately one-fifth of one per cent (.00216) of the total of 35,558 toll calls (R. 2486, 2487).

No showing was made that respondent Exchange was the only telephone connection in the City of Corcoran through which calls could be made to points outside the city, and, in fact, the evidence showed on the contrary that the facilities for such calls were maintained by Pacific Telephone & Telegraph Company, rather than by respondent Exchange.

The only other evidence which might have any bearing on the matter of jurisdiction was the following:

(a) Glenn testified that both the Western Union Company and the Atchison, Topeka & Santa Fe Railroad were subscribers to the Exchange (R. 2477, 2478). However there was no evidence as to the volume of business transacted over the system by these two subscribers. Glenn testified that the Exchange had no agreements or working agreements with the Western Union, and did not serve them in any way at all (R. 2476), and that if anyone wanted to send a telegram and phoned it in to the telephone office they would not take it there, but it would have to be taken over at the Santa Fe (R. 2476), and that the Exchange did not relay any messages for the Western Union, and if the agent at the Santa Fe, who handles the Western Union messages, desired to deliver such message over the telephone he would have to call the party and give the message, but the Exchange did not take any responsibility in delivering such messages, and Glenn did not know if the Western Union agent used the telephone lines of the Exchange to deliver messages (R. 2477).

(b) Glenn testified that during the past year the Exchange installed a new cable to replace some old cable and make additions, and that this cable although ordered from the Graybar Electric Company, of San Francisco, was shipped from some point in Illinois (R. 2492). However, he testified that the order for this

cable was placed with the Graybar Electric Company in San Francisco, and that he had no communication whatsoever with anyone outside the State of California with respect thereto. He also testified that the Exchange buys its wire from the Graybar Electric Company in San Francisco and some from the Kellogg Switchboard and Supply Company in Los Angeles (R. 2493); that the Exchange buys its telephone poles principally from the San Joaquin Light & Power Company, and some from the Graybar Electric Company, but that it has no material or equipment of any type that was purchased from points outside the State of California. Switchboards are likewise purchased from Graybar (R. 2494, 2495), and, so far as he knew, Graybar manufactured their own switchboards, at least they are so marked, and also manufactures wire used by the Exchange (R. 2495).

The evidence showed that the number of calls and the amount of income from calls to points outside the state were not substantial but were, in fact, trivial, and there was no showing that any obstruction to the operations of respondent Exchange would tend to burden or obstruct the free flow of commerce within the meaning of the Act.

It seems clear, in view of the decisions, that the business and operations of the Exchange standing alone do not justify the Board in assuming jurisdiction, as it has been decided in a number of cases that the fact that an intrastate concern may engage, to a limited extent, in interstate commerce, or that its operations may indirectly affect interstate commerce, is not suffi-

cient to give the Board jurisdiction or alter the intrastate character of the business.

In **National Labor Relations Board v. Bradford Dyeing Ass'n.** (1st Circuit, Aug. 1939) 106 F. (2d) 119 the court stated at page 122:

"The shipment of 1 percent of the cloth processed in the form of remnants or 'rags', consisting of the 'torn ends' of the pieces processed, which the respondent was permitted by the customer to have and sell, and which it sold in New York, is so remote from the main purpose of its business and is simply only a mere incident thereof, that Congress could not have intended that such transactions alone could subject the entire business of a plant to the penalties that may be imposed by the Labor Board under the Act."

In **National Labor Relations Board v. Idaho-Maryland Mines Corp.**, 98 F. (2d) 129 (C. C. A. 9th, 1938), the court said at page 121:

"Nor is the Board's assumption of jurisdiction warranted by the fact that the United States, after purchasing respondent's product and commingling it with other gold and silver, ships the commingled product from its San Francisco mint to its Denver mint for safe keeping. **Respondent does not make these shipments or cause them to be made.** We regard such shipments, not as commercial transactions, but as administrative acts of Government. **If, however, such acts may be said to constitute commerce, it is a commerce to which respondent's activities are not closely, intimately or substantially related, and which respondent's labor practices do not directly or substantially affect.**"

In **Consolidated Edison Co. v. National Labor Relations Board**, 305 U. S. 197, 63 L. Ed. 126, the Supreme Court in holding that the Board had jurisdiction

in the case of an intrastate public utility company considered the interstate character of the instrumentalities served by the respondent. However, the evidence in the present case did not show any dependence of any such interstate instrumentalities upon the Exchange as was shown in that case.

The question of the effect of the labor relations of a business upon interstate commerce was considered in **National Labor Relations Board v. Jones & Laughlin Steel Corporation**, 301 U. S. 1, 81 L. Ed. 893. In that case the court stated:

“Although activities may be intrastate in character when separately considered, if they have such a close and substantial relation to interstate commerce that their control is essential or appropriate to protect that commerce from burdens and obstructions, Congress cannot be denied the power to exercise that control. *A. L. A. Schechter Poultry Corporation vs. United States*, *supra*. **Undoubtedly the scope of this power must be considered in the light of our dual system of government and may not be extended so as to embrace effects upon interstate commerce so indirect and remote that to embrace them, in view of our complex society, would effectually obliterate the distinction between what is national and what is local and create a completely centralized government. The question is necessarily one of degree.**” (pp. 911, 912).

Similarly, in another statement demarking the limits of the Board's power, the Supreme Court, in **Santa Cruz Fruit Packing Company v. National Labor Relations Board**, 303 U. S. 453; 82 L. Ed. 954, said at pp. 960-961:

“It is also clear that where federal control is

sought to be exercised over activities which separately considered are intrastate, it must appear that there is a close and substantial relation to interstate commerce in order to justify the federal intervention for its protection. However difficult in application, this principle is essential to the maintenance of our constitutional system. The subject of federal power is still 'commerce', and not all commerce but commerce with foreign nations and among the several states. The expansion of enterprise has vastly increased the interests of interstate commerce but the constitutional differentiation still obtains. *A. L. A. Schechter Poultry Corp. vs. United States*, 295 U. S. 495, 546; 79 L. Ed. 1570, 1588; 55 S. Ct. 837, 97 A. L. R. 947. 'Activities local in their immediacy do not become interstate and national because of distant repercussions.' *Id.*, p. 554."

"To express this essential distinction, 'direct' has been contrasted with 'indirect' and what is 'remote' or 'distant' with what is 'close' and 'substantial.' Whatever terminology is used, the criterion is necessarily one of degree and must be so defined..."

The question that must be faced under the Act upon particular facts is whether the unfair labor practices involved have such a close and substantial relation to the freedom of interstate commerce from injurious restraint that these practices may constitutionally be made the subject of federal cognizance through provisions looking to the peaceable adjustment of labor disputes."

In the *Santa Cruz Packing Company* case, *supra*,

about 37% of the respondent's products were shipped in interstate commerce, but there the actual effect of unfair labor practices involved upon interstate commerce had been clearly demonstrated. In the instant case, the evidence showed without dispute that only an

infinitesimal amount of the business handled by the Exchange was in interstate commerce and there was absolutely no showing that any alleged unfair labor practices of the Exchange would affect interstate commerce in the slightest. If any alleged unfair labor practices of the Exchange could affect interstate commerce, it is clear that the effect would be remote, indirect and unsubstantial.

The Board contends that respondent Exchange is an instrumentality of interstate commerce, and that upon the basis of the Court's decision in *N. L. R. B. v. Central Missouri Telephone Co.*, 115 F. (2d) 563 (C.C. A. 8) and the decisions referred to in said case, the Board has jurisdiction over the Exchange. We respectfully submit and contend, however, that the facts in the Central Missouri Telephone Co. case are so dissimilar from the facts of the instant case that said decision is in no way controlling in the instant case.

In the Central Missouri Telephone Company case, *supra*, the respondent company maintained or controlled 27 telephone exchanges in the State of Missouri, 24 of which were directly connected with the facilities of the Bell Telephone System. These exchanges handled and did a large volume of business, both intrastate and interstate. The revenue derived from the transmission of interstate messages was quite substantial and amounted to 13.2% of the annual gross income. The volume of messages transmitted in interstate commerce amounted to 7.6% of the total messages completed each month. The respondent company in addition to having its telephone facilities in the State of Missouri

had and maintained its general office in the State of Iowa. The stock of the respondent company was, with the exception of a few shares of directors qualifying stock, owned and held entirely by a Delaware corporation, a foreign corporation. This foreign corporation also owned or controlled a number of other telephone companies which had their general offices in the same city in Iowa. The respondent company also purchased large quantities of materials outside of the State of Missouri which were shipped into the state in interstate commerce. The respondent company had a gross annual income of about \$170,000.00. The Board in said case found and held that the respondent company was **actually engaged** in interstate commerce and was not merely an instrumentality of interstate commerce. It is clear that the Court's decision in said case did not rest entirely upon the additional finding that the respondent company was an instrumentality of interstate commerce. It also appears that in said case there was an actual labor dispute involving the plant department employees of the respondent company.

In the instant case the evidence, as hereinabove set forth, shows without any contradiction or dispute whatever:

(a) That all of the plant and facilities of the Exchange are located entirely within the small city of Corcoran in the State of California;

(b) That the Exchange has only about 300 subscribers;

(c) That its gross annual income is less than \$15,000.00;

(d) That on a value basis the annual revenue derived from interstate messages is only approximately $\frac{1}{3}$ of 1% (.0355) of the gross annual income;

(e) That the number of interstate messages amounts to only approximately $\frac{1}{5}$ of 1% (.00216) of the total number of annual toll calls;

(f) That the majority of the stock is owned by Mr. C. H. Glenn, the president and general manager of the company who is a resident and citizen of California (R. 3219);

(g) That the Exchange has no office anywhere except in the City of Corcoran;

(h) That it purchases all of its materials, supplies and equipment in the State of California (R. 2491-2495); that it is not actually engaged in interstate commerce and that it has no labor dispute with anyone.

The Board in its purported Decision and Order found that the income of the Exchange from calls to points outside the State of California, during the fiscal year 1938, was \$177.13. (R. 516). This finding is not in accordance with the evidence which as hereinabove set forth showed that the Exchange under its working agreement with Pacific Telephone & Telegraph Company received only 30% of said sum of \$177.13, or only \$53.14. (R. 2487, 2488; 2490).

The Board also found that at least three of the Exchange's customers are engaged in interstate commerce, namely, Western Union Telegraph Company, Atchison, Topeka and Santa Fe Railroad and respondent Boswell Company. (R. 515). However, as hereinabove pointed out, there was no evidence whatever

regarding the nature or extent of the business carried on by respondent Boswell Company at any of the times involved in this proceeding, nor was there any showing whatever that any of the operations of respondent Boswell Company in issue in this case were related to interstate commerce or could have in any manner affected, obstructed or burdened interstate commerce within the meaning of the Act; the Board having rested its case as to the matter of its jurisdiction of Boswell Company solely upon a stipulation as to the operations of said respondent during the one year period ending June 30, 1938.

No evidence whatever was offered or introduced which would tend to establish that Western Union Telegraph Company was or is engaged in interstate commerce. The Board in finding that said Company is engaged in interstate commerce went entirely outside the record.

The only evidence showing or tending to show that Pacific Telephone & Telegraph Company is engaged in interstate commerce was the annual report of said company for 1938. (R. 2466; Board's Exhibit No. 20 (a), and the annual report of American Telephone & Telegraph Company for 1938, (R. 2467; Board's Exhibit 20 (b)). Both of these exhibits were erroneously admitted in evidence by the Trial Examiner over the objections of the respondents. The respondents conceded the authenticity of each of said documents but objected to their introduction in evidence on the ground that each of the exhibits was incompetent, irrelevant and immaterial and was hearsay as to the respondents,

and upon the further ground that there had been no showing whatsoever concerning the Board's jurisdiction over the respondent Exchange, or that said respondent acted in the interest of anyone who is subject to the Board's jurisdiction or is an employer within the meaning of the Act; and upon the further ground that there had been no connection shown between the Exchange and either of the companies mentioned in said documents, that is, the American Telephone & Telegraph Company or the Pacific Telephone & Telegraph Company. (R. 2465; 2466).

The statements and arguments made by the Board in its brief to the effect that the Exchange is part of the Bell Telephone System (Brief pp. 5 and 6) are predicated entirely upon the annual report of the Pacific Telephone & Telegraph Company and American Telephone & Telegraph Company, which, as above mentioned, were erroneously admitted in evidence, and upon reports of the Federal Communications Commission cited in the brief which were not even offered in evidence and consequently constitute no part of the case.

Furthermore, the Board failed to show that Mrs. Dunn, the only employee of the Exchange involved in this proceeding, came within any provisions of the Act or that she was entitled to any relief thereunder.

The undisputed evidence shows: (a) There was no current labor dispute, or labor dispute of any kind, between the Exchange and any of its employees. (b) Mrs. Dunn herself testified that she was not a member of **any** labor organization, and in particular was not a member of any labor organization with which Mr.

Prior was connected. (R. 2574) In fact she was not even eligible for membership in the Federal, for, as found by the Board the Federal was organized for the purpose of admitting to its membership employees of the Boswell Company. (R. 517). She also testified that she had not in any manner assisted or attempted to assist any such labor organization. (R. 2574, 2575). Her above mentioned testimony was corroborated by that of her husband, John Ernest Dunn. (R. 2571, 2573).

There was no evidence showing either: (a) That the Exchange in discharging Mrs. Dunn acted either directly or indirectly in the interest of the Boswell Company; and in fact neither the Trial Examiner nor the Board found that it did so act.

(b) That the discharge of Mrs. Dunn had any effect whatsoever upon the Federal or upon any employee of the Boswell Company, or upon any employee whomsoever.

(c) That the discharge of Mrs. Dunn did or could in anywise or to any extent affect commerce within the meaning of the Act; or

(d) That the Exchange, following the discharge of Mrs. Dunn, ever replaced her with a new employee.

The respondents respectfully submit and contend that the Board wholly failed to establish that it has jurisdiction over either of the respondents, and that regardless of any question of jurisdiction insofar as respondent Exchange is concerned, there was absolutely no showing or proof that the Act applies to Mrs. Dunn or that she is entitled to any relief thereunder.

II.

**THE CHARGES AGAINST RESPONDENT
BOSWELL COMPANY****A. THE FACTS:**

In view of the voluminous records in this case and in order that the court may have a better understanding of the matter we are herewith setting forth a chronology and brief summary of the pertinent facts with respect to respondent Boswell Company.

The evidence showed that the business conducted by respondent Boswell Company is a highly seasonal business, and the Board so found. The Corcoran plant consists of six cotton gins, a cottonseed oil mill, a mixed feed plant, a cattle feed yard, (R. 716) and a machine shop, blacksmith shop and garage conducted in conjunction with its gins and mill. (R. 2992). The operation of the gins is dependent upon the amount of cotton which is available in that vicinity for ginning and processing each year. The ginning season is coextensive with the cotton picking season, which commences in the fall of each year and usually ends during the latter part of the same year, or the early part of the following year.

The operation of the cottonseed oil mill is likewise dependent upon the amount of cotton ginned. The oil mill is operated only a small portion of the year to crush the seeds which are received from the gins.

The uncontradicted evidence showed that the season here in question, namely, the season commencing

in the fall of 1938, was a very short season. The amount of cotton available for ginning during that season was greatly reduced by reason of the flood of Tulare Lake, in the vicinity of Corcoran, and the government crop control program. In order to illustrate the reduction in the amount of work available at the plant of respondent Boswell Company during the times here involved, we will set forth herein a comparison of the operations for the season here in question with the preceding season. The season commencing in the fall of 1937 is designated as the 1937-38 season, and the season commencing in the fall of 1938 is designated as the 1938-39 season.

(1) Operation of Gins.

1937-38 Season

Commenced about September 20, 1937.

Less than a week after commencing, all six gins were operating 24 hours a day with two shifts of 12 hours each. All gins were operated full time until the middle of December, 1937. Two gins were then shut down and four gins operated until the middle of January, 1938. Two gins were then shut down and two gins operated two or three weeks longer. One gin was then shut down and the remaining gin operated until the season ended in the latter part of February, 1938. (R. 2992-2994).

1938-39 Season.

One gin was started September 30, 1938. Two or three days later three more gins were started. Only four gins operated at any time during the entire sea-

son. They were **operated with only one shift** of men per day, the hours operated each day being dependent entirely on the amount of cotton brought in. On some days some of the gins operated only a few hours and on some days some of the gins did not operate at all.

No. 4 gin started October 3, 1938 and closed November 25, 1938 and did not operate thereafter. During this period there were some days when this gin did not operate at all and some days when it operated less than 12 hours.

No. 2 gin started October 3, 1938 and closed December 3, 1938 and did not operate thereafter.

No. 1 gin started September 30, 1938 and closed December 5, 1938, after which it ran part-time until December 30, 1938. About one-half of the days during the period from December 5 to December 30, 1938, that gin was not operating at all, and some days during that period it operated only 2 or 3 hours or half a day.

No. 3 gin started October 1, 1938 and closed January 24, 1939, but operated only part-time during that period because of lack of cotton. (R. 3002-3005).

(2) Total Amount of Cotton Ginned.

1937-38 Season	1938-39 Season
47,250 bales	9,944 bales

(R. 3000).

(3) Operation of the Oil Mill.

The oil mill is operated according to the amount of cotton seed which the company has on hand and according to market conditions. Occasionally some of the seed in storage heats up and it is necessary to mill

this "hot seed" in order to keep it from spoiling. The evidence showed that one of the main purposes of maintaining the cattle feed yard at Corcoran is to provide an outlet for cottonseed cake and sometimes it is necessary to operate the mill for a few days to furnish feed for the cattle.

The following operations of the oil mill were to crush seeds from the cotton ginned during the 1937-38 ginning season:

Commenced.	Closed.
September 20, 1937	March 7, 1938
May 3, 1938	May 17, 1938
July 1, 1938	September 27, 1938

The following operations of the oil mill were to crush seeds from cotton ginned during the 1938-39 ginning season:

Commenced.	Closed.
October 24, 1938	November 15, 1938
January 5, 1939	January 12, 1939
February 22, 1939	February 24, 1939
April 29, 1939	May 2, 1939

The mill also ran two days in the early part of June, 1939.

The operation of the mill for the two days in February above specified was caused by hot seeds, and the two short runs in April and June were caused by a shortage of feed (R. 3006-3008).

(4) Total Amount of Seed Crushed in Mill.**1937-38 Seed.**

23,716 tons

1938-39 Seed.

5,668 tons

(R. 3000-3002).

(5) Planting Seed.

In order to obtain cotton planting seed it is the practice of the company to plant a special seed on a certain acreage each year, and the seed derived from the cotton grown on that acreage is then sacked and stored separately for planting seed.

In 1937 the company set aside a total of 1,537 tons of planting seed.

In 1938 the company set aside a total of 1,007 tons of planting seed. (R. 3009).

(6) Number of Men Employed.**Peak Employment****1937-38****Peak Employment****1938-39**

Week ending October 28,
1937, 189 employees, ex-
clusive of office help.

Week ending October 27,
1938, 86 employees, ex-
clusive of office help.

(R. 2998, 3000).

The evidence shows that the peak of employment each year is between October 15 and November 15, and that the number of men employed increases during the early part of the season and decreases during the later part of the season. (R. 2998, 3000).

Since practically all of the alleged discriminatory discharges occurred between November 14 and November 19, 1938, we will set forth herein the figures

showing a comparison of the work available at the Boswell plant about that time in 1937 and 1938.

The total amount of cotton ginned during the 1937-38 season to and including November 17, 1937, was 25,558 bales which was slightly more than one-half of the total amount of cotton ginned during that season. (R. 3006).

The total amount of cotton ginned during the 1938-39 season, to and including November 17, 1938, was 6,785 bales, which was over two-thirds of the total amount of cotton ginned during that entire season. (R. 3006).

On the day of November 17, 1937, a total of 468 bales of cotton was ginned. (R. 3005, 3006).

On the day of November 17, 1938, only 167 bales of cotton were ginned. (R. 3006).

Of the 1,007 tons of planting seed which was laid aside in 1938, 879.4 tons had been sacked, hauled and stored on November 17, 1938. (R. 3009). The picking of the acreage set aside for planting seed was completed on November 17, 1938. (R. 3010, 3011).

As is demonstrated by the foregoing figures, as well as by other uncontradicted evidence in this case, the season was fast drawing to a close at the time of the alleged discriminatory discharges.

The charge upon which the amended complaint here in question was issued was signed by E. F. Prior. Before April 20, 1934, Prior had been employed by Foster & Gamble Manufacturing Company at Long Beach, California, in charge of unloading and warehousing merchandise. (R. 1098). Subsequent to that

time he organized a number of local unions directly chartered by the A. F. of L., and known as Federal Unions. (R. 1095, 1096). He became business representative of each of these local unions. (R. 1096).

On **July 1, 1938**, Prior formed what was known as California State Council of Soap and Edible Oil Workers and was elected secretary of that organization. (R. 1093, 1094). The Council does not hold a charter from the American Federation of Labor but purports to act through representatives of each of the local unions organized by Prior. (R. 1094, 1095).

About **March 15, 1938**, Prior came to Corcoran with the president of his Bakersfield local, who was the brother of O. L. Farr, an employee at the Boswell plant. They called on O. L. Farr and discussed the organization of a union at the Boswell plant. (R. 815-818). While Prior was in Corcoran at that time he called at the office of the Boswell Company but neither the superintendent, Gordon Hammond, nor the manager, Louis T. Robinson, were there. (R. 818). The evidence shows that Gordon Hammond and Louis T. Robinson were the only persons at the Corcoran plant who had authority to hire or fire or speak for the company.

After that Prior made no further effort to organize the employees of the Boswell plant until **July 7, 1938**, at which time he again discussed the matter with O. L. Farr, who gave him a list of some 30 names of employees. (R. 818, 819). Prior decided to hold an organizational meeting on **July 13, 1938** and invitations to the meeting were sent to the employees named on the list. (R. 819). On **July 13, 1938**, the meeting

was held in the American Legion Hall in Corcoran and Prior presided at the meeting. Only six or eight persons attended the meeting, including two men named Weatherby and Gilmore, neither of whom was employed at the Boswell plant at that time. (R. 819-821).

Prior testified that he first explained the purpose of the meeting and then told the men present that he would try to answer any questions that they might have relative to self organization. He was informed, particularly by Mr. Gonders, who was one of the Boswell Company employees, that the employees of the Boswell Company were one happy family, that they were very well satisfied with their wages, and that they really wanted no organization in the plant. (R.820-821).

After the meeting was over, Prior talked to Gilmore and Weatherby in one of the beer parlors in Corcoran, (R. 821), and Prior was permitted to testify, over the objection of respondents, to the remote hearsay that Gilmore informed him that some of the Boswell employees had not attended the meeting because the company was opposed to any organization; that he (Gilmore) had not been reemployed at the plant when the mill started up on July 1, and that Gordon Hammond, the superintendent, had been very indefinite regarding any future employment with the Boswell Company. (R. 821-823).

Prior, without having discussed the matter either with the management or with any other persons, thereafter about **July 17, 1938**, filed an 8 (1) charge

against the Boswell Company with the regional office of the Board in Los Angeles. He testified that this was his next **organizational activity** (R. 823-824, 1110). He stated that although Corcoran is located in the Twentieth Region he filed the above mentioned charge in the Twenty-first Region at Los Angeles, with the consent of the Regional Director, because Prior's office was located at Wilmington, and it would be more convenient for him to have the matter handled by the Los Angeles office. He stated that he was later informed by the Regional Director of the Twenty-first Region that the charge must be filed in the Twentieth Region, as a result of which he withdrew the charge and filed the charge the next day in the Twentieth Region at San Francisco (R. 1173, 1174).

Since Prior's sole investigation in support of this sworn charge was his conversation with Gilmore and Weatherby, neither of whom was an employee at the time, it is apparent that this charge was based upon hearsay relating to an alleged discrimination against Gilmore. This charge was never served upon any of the respondents, and the Trial Examiner at the hearing refused to grant a request by respondents that the charge or a copy thereof, be produced for the purpose of testing the credibility of Prior and comparing it with the later charges which were filed by him. (R. 1102-1104; 1110, 1111).

Prior testified that in **August, 1938**, the Regional Director of the Twentieth Region sent Mr. Larson, one of the Board's investigators, to Corcoran for the purpose of investigating the charge; that Larson, after

completing his investigation on August 31, 1938, advised Prior that he felt there was not sufficient evidence to warrant the issuance of a complaint and requested Prior to withdraw the charge if nothing further happened within a couple of weeks. (R. 1174-1177).

Prior testified that on **September 2, 1938**, he met with Louis T. Robinson, Gordon Hammond and William W. Boswell at the office of respondent Boswell Company. Although the union had not been formed at that time, Prior informed them that the "**union**" had filed a charge with the Board, and that he would like to discuss it with them to avoid any possible misunderstanding as to the policies of the union. Louis T. Robinson testified that he told Prior at that meeting that the company had no objection to the men joining any union they saw fit, but that the company was faced with a serious unemployment situation, they knew that they would not have over a 10,000 bale cotton run and that he hoped Prior wouldn't do anything that would aggravate the condition. (R. 2841). This testimony by Louis T. Robinson was undisputed. Prior said his organizational operations would be on a high plane. During the course of this conversation, the name of Gilmore was mentioned by someone, and Louis Robinson stated that if he (Robinson) were going to try to organize a union he wouldn't try to build it around Gilmore but would go out in the plant and try to get some of the regular men. Mr. Robinson testified that he intended by this statement that if Prior was going to operate on a high plane he should

go right out and see the men, talk it over. (R. 828, 829; 2841-2844).

On **September 2, 1938**, Prior obtained the first Union membership applications from the Boswell employees (R. 1108, 1109). Farr (R. 1014; 1052), Martin (R. 1207), Spear (R. 1493; 1576), Wingo (R. 1616; 1632), and Andrade (R. 1702), signed applications for Union membership. Boyd Ely signed an application about September 5th, 1938. (R. 1752; 1762).

On **September 27, 1938** the mill shut down. Quite a number of the men were laid off, including Martin, Farr, Andrade, Wingo and Boyd Ely.

On **October 8, 1938**, Prior as Union representative, called upon Gordon Hammond and discussed the re-employment of Andrade, Martin, Boyd Ely and Farr. Gordon Hammond told Prior that if Martin, Farr, Andrade and Boyd Ely **applied** for work they would be placed back to work as soon as work was available. Prior told Gordon Hammond that he would notify them to apply (R. 831-833; 3012, 3013). Within a few days after this meeting Martin, Farr, Andrade and Boyd Ely were re-employed (R. 833; 779; 801; 805; 781). Boyd Ely (R. 1746, 1747), and Martin (R. 1205) were given raises in pay when they were re-employed at this time.

About two weeks before or after this meeting Prior withdrew the charge filed by him on July 17 because, as he testified, "it appeared, or we felt that the alleged violation was no longer being practiced and that it was no longer necessary to go ahead and press the charge." (R. 1125, 1126).

Spear testified that about **October 5th or 10th, 1938**, he, Martin and Farr met with Gordon Hammond, the plant superintendent, as a Union committee and told him that they represented the Union. Spear testified that at that time, in his opinion, there were men being carried on the payroll that were not needed, and the purpose of this conference was to attempt to work out a schedule for the mill and gin or some method to keep the men from being laid off. Spear's version of this meeting was in substance as follows:

Gordon Hammond was willing to talk with them as a Union committee, he recognized them and was willing to work out some plans as to hours (R. 1527, 1528; 1532, 1533). Gordon Hammond showed him a letter from J. G. Boswell to the effect that the company would rather not start the mill at that time because it could keep the seed easier than the cottonseed cake, but that if the mill started the company did not care whether the boys worked 8 or 12 hours. (R. 1528, 1529; 1565, 1566). Spear told Gordon Hammond that he had heard that some pressure was being put on some of the prospective Union members (R. 1520, 1521, 1526). Gordon Hammond told him that if anything like that was going on he didn't know about it and didn't authorize it (R. 1526, 1527). This alleged pressure was hearsay with Spear, and he didn't tell Gordon Hammond the names of any of the alleged offenders. Spear was not sure whether Gordon Hammond told him in this conference that the men were free to join any Union as far as the company was concerned, but Gordon Hammond had mentioned that

fact to him a month or so before this conference. (R. 1573, 1574). Spear testified that he thought Gordon Hammond had first mentioned this fact sometime in July, 1938, shortly after Prior first came to Corcoran. (R. 1575, 1576).

Spear testified that before this conference he and Martin and Farr had been soliciting Union members among Boswell employees. (R. 1578).

About **October 17, 1938** a letter (R. 1772; Boswell's Exhibit No. 8) was written by the manager to Gordon Hammond stating that there would be a crush of only around 5,000 or 6,000 tons of cottonseed that season. The letter stated that the company had no particular preference as to when the seed were crushed because it already had a large supply of cottonseed cake on hand, and that it would be easier to store the cotton seed than the by-products from it. The letter requested Gordon Hammond to have the employees designate their preference between a 12-hour shift and an 8-hour shift. This letter was passed around by Gordon Hammond and the employees who signed the list unanimously expressed their preference for a 12-hour shift. Among the employees who signed the list were Ygnacio Galvan, A. Galvan, Walter Winslow, Joe Briley, B. L. Ely, Lawrence Galvan, Pete Galvan and Manuel Escobedo, all of whom, the evidence shows, were members of Prior's Union or later became members. The oil mill was started October 24, 1938 and in accordance with this preference by the employees it ran on a 12-hour shift until November 15, 1938. (R. 3007).

Prior testified that on **November 5, 1938** a meeting was held of his Union, and the Union charter was installed. (R. 837-839). This charter had been applied for by Prior and was dated **October 26, 1938**. It contained the names of Farr, Wingo, Andrade, Martin, Spear, Peter Galvan and Emanuel Escobedo as charter members (R. 839-841). At this meeting Spear, Farr, and Martin were elected as president, vice-president and secretary respectively of the Union. (R. 854, 855).

Boyd Ely testified that he was working on the night shift at the mill and was laid off on the night of Novemer 14th. Walter Winslow testified that he was laid off on November 15, 1938, the day the mill closed.

Prior testified that he attended a meeting of the Union on **November 16, 1938** at which certain reported lay-offs and reported intimidations of prospective Union men were discussed (R. 858). A committee composed of Spear, Farr, Martin and Prior was selected to confer with the management concerning these reports. (R. 861, 862).

The evidence shows that Prior went to the Boswell plant after the plant was in operation on **November 17, 1938**, and that at his request Gordon Hammond called Farr, Spear and Martin **from their jobs** to hold a conference (R. 1053, 1054). Prior told Gordon Hammond that they knew a number of men had been laid off and that others would probably be laid off because of the smaller acreage and scarcity of cotton that year (R. 1156, 1157). Prior, Spear and Farr suggested

to Gordon Hammond that the working day be reduced to 8 hours so that everyone would get a little work rather than some of them being laid off (R. 1056; 1144; 1579, 1580). Prior called Gordon Hammond's attention to the fact some plants operated on a three-day week in order to avoid layoffs (R. 1144). Spear told Gordon Hammond that the Union was not asking for any increase in pay and that they were all familiar with the fact that there was a shorter cotton crop that year and familiar with the conditions (R. 863). They didn't discuss the reinstatement of the men who had been laid off (R. 1155). Spear told Gordon Hammond that a number of the employees had informed him (Spear) that Mr. Tommy Hammond and Mr. Joe Hammond had been telling the men that they would lose their jobs if they joined the Union, or that the Company would shut down and had been making a number of intimidating remarks (R. 1157). They discussed the authority of Tom Hammond and Joe Hammond and Prior stated that he wanted "a clarification by **some-one in charge** as to their exact status" (R. 1158, 1159). Gordon Hammond informed them that neither Tom Hammond nor Joe Hammond had authority to hire or fire employees, that no one had such authority other than himself. He also informed them that Tom Hammond and Joe Hammond were not authorized to make those statements, and that he would talk to them about it (R. 1159).

Gordon Hammond testified as follows: Prior asked him if the men would be laid off if they came to Union meetings and he replied that they would not

and that Prior could tell them if they wanted to go it was all right for them to go, and if they would rather ask him, Gordon Hommand, he would tell them to do so, or they could ask Louis Robinson (R. 3015). Spear said that he had heard Tom Hammond and Joe Hammond were telling some of the employees that if they joined a union they would be laid off, and Gordon Hammond told him that he didn't think they were saying that because he had instructed them previous to that time not to say anything about the Union, and that any of them had the right to join the Union, or any union (R. 3017). Prior asked him not to lay off Union men and Hammond told him he did not know who the Union men were and that earlier that morning he had already told three men (referring to Griffin, Johnston and Eller) that there would be no work for them after that day as the sacking of planting seed would be completed. (R. 3016). Spear then offered to furnish Gordon Hammond with a list of the names of the Union men, but Prior told Spear not to do this as it was against the Union rules (R. 3016).

Gordon Hammond also told the committee at that time that he was planning on closing down gin No. 4 that day and they asked if there was some way this gin could be operated longer. He told them he would see if he couldn't work out some plan to do so (R. 1579; 3017). The testimony of Gordon Hammond relating to this conversation was not denied and was substantially corroborated by the testimony of Spear who confirmed the fact that Hammond told them no one was authorized to make statements against the Union.

Prior testified that at the time of this conference the committee knew the company was then laying off certain men and was about to close down one or more of the gins and it looked as though the work was about to run out if they continued working the customary number of hours (R. 1141). Spear testified that he knew the work was running out about that time (R. 1567).

Gordon Hammond testified that later during the same day, to wit, November 17, 1938, he spoke to Tom Hammond and Joe Hammond concerning the alleged intimidating remarks (R. 3019) and that previously in September, 1938, he had instructed them not to interfere with any of the men joining a union as they had a right to join any union. (R. 3017, 3018). This testimony was neither contradicted nor impeached in any way.

Following this conference, gin No. 4 was not shut down as originally contemplated but Gordon Hammond issued instructions for two of the gins to start on the following morning, November 18, 1938 at 7 a. m. and to run until 3 p. m., and for the other two gins to start operations at 10 a. m. Before this time it had been the practice to start all of the gins at 7 a. m., and Gordon Hammond's purpose in reducing the operating time was to provide employment as long as possible (R. 3019). Spear testified to this change in hours and stated that he understood that this change was part of the plan which had been suggested to Gordon Hammond by the Union at the meeting of

November 17, 1938 (R. 1583).

On the morning of **November 18, 1938**, the members of Prior's Union wore their Union buttons to work at the plant for the first time. (R. 1494). Gordon Hammond left the plant for Los Angeles that morning about 8:30 and did not return to the plant until about 7 o'clock that evening (R. 3020, 3021). About 10 o'clock that morning during his absence some of the employees at the plant shut down some of the machinery, and the employees then held a meeting in the yard near the warehouse (R. 1498, 1499). The testimony regarding the occurrences at that meeting consisted mainly of conversations which were hearsay as to all respondents and were admitted in evidence over the objection of all respondents. According to Spear, some of the men asked him about the Union, and he started to explain about the 8-hour plan that was being put into effect to save gin No. 4 from being closed. (R. 1503). Someone suggested that they throw the Union men out (R. 1214, 1215), and three men took hold of Spear and led him over to the company's office (R. 1504) where some of the men in the crowd demanded to see Louis Robinson. Louis Robinson came to the door of his office and some of the men requested him to fire the Union men (R. 2618). When Louis Robinson found out about the trouble he told all of the men who were present that they were too excited and he wanted them to go back to work, both Union and non-union, and after they cooled down he would come out and see if he couldn't straighten the matter out (R. 2619). All of the men then return-

ed to their work. (R. 1506). However, the non-union men refused to work with the Union men (R. 1513) and, after waiting a few minutes for Louis Robinson to come around, Spear and the other Union men discussed the matter and left the plant. None of them notified Louis Robinson of their intention to leave, and the first knowledge he had concerning their departure was when Farr telephoned him between 11 and 11:30 A. M. that morning and informed him that the Union men had decided it was best for them to go home. (R. 1013; 1241, 1242; 1517, 1518; 2620; 2624).

Neither Louis Robinson nor Gordon Hammond had any notice or knowledge that the employees intended to hold a meeting on the morning of November 18th (R. 2849; 3021), and the employees had not been given permission or authorized to shut down the plant or leave their work. The first knowledge Gordon Hammond had of the occurrences on that morning was when he returned to the plant from Los Angeles that night (R. 3021). When he returned to the plant that evening he went into his office and started making up the time cards. After he had made out about half of the time cards he was called out to the scale house to weigh some cotton. Before leaving his office to weigh the cotton he talked with E. M. Roberson and Rube Lloyd who happened to be present. (R. 3135). He asked them what the crowd was doing in the front office, and they told him there had been some difficulty among the employees that day out in the yard and the men had come there that evening for the purpose of letting the Company know they were

satisfied with the work, the way it was managed, and conditions in every way. (R. 3135, 3136). They told him what had taken place that morning, and that there seemed to be some misunderstanding among the employees that morning (R. 3136). They also told him about Spear having been taken to the office and about Mr. Louis T. Robinson telling all of the men to return to work, but that later some of the Union men had left. Mr. Hammond told Lloyd and Roberson that was the worst thing they could have done; that they shouldn't have done that (R. 3140).

On the evening of **November 18, 1938** a number of the employees met in the lobby of the administration building. The facts concerning this meeting are hereinafter set forth and discussed in connection with the Association.

On **November 19, 1938**, Prior, Martin and Spear called at the company's office and met with Louis Robinson and Gordon Hammond (R. 869). Prior asked about putting the Union men who had left the plant on the day before back to work (R. 870; 2850, 2851). Louis Robinson testified that he said the men could go back at any time, but Prior said they would need special protection. According to Louis Robinson, he told them he didn't think they needed **special** protection and the company wouldn't furnish it, but they could go back to work, and he suggested that the Union men go and talk to the other employees and everything would be all right. The Union men, however, said they didn't want to talk with the other employees, and Louis Robinson told Gordon Hammond

to feel out the men to see if protection was necessary (R. 2850, 2851). Louis Robinson also said he told them that the men could go back to work but if they didn't go back to work they would get their pay anyway until some determination of the matter. Prior asked for the earliest possible answer and Louis Robinson said he couldn't hurry but he would let them know as soon as he could (R. 2851).

Prior testified that he suggested to Louis Robinson that it would be better to let the Union men stack and re-stack cake in order to prevent more serious consequences (R. 1122, 1123). He stated that the more serious consequences to which he referred were a Board hearing and a boycott (R. 1124, 1125). According to Prior, Louis Robinson stated that there was a tense feeling among the employees still working which required careful consideration before bringing the Union men back and causing another flare-up (R. 1136, 1137) and that he and Gordon Hammond would feel out the sentiment of the men (R. 1138, 1139). Prior also testified that he told Robinson he would like to know by 12 o'clock (R. 871).

Spear testified that there was some talk in this conference about the company furnishing protection, and he admitted that Louis Robinson might have said that the men could go back to work right away but no extra protection would be given (R. 1557).

Prior testified that when he heard nothing from Louis Robinson by 12 o'clock that day, the Union voted a boycott against the products of the Boswell Com-

pany (R. 871).

On **November 21, 1938**, Prior filed charges against the Boswell Company with the Board in Los Angeles (R. 695, 696; Board's Exhibit 1 (b)).

Within a few days after the filing of these charges, Mr. Larson, a representative of the Board, called and spent at least two days in Corcoran investigating the charges (R. 2636, 2637). The exact date of Mr. Larson's call does not appear from the record, but it was some time between November 21, 1938 and November 25, 1938, as Prior testified that he discussed with Mr. J. G. Boswell in Los Angeles on November 25, 1938 the matter of the notice hereinafter referred to which was posted at the plant at the request of Mr. Larson (R. 1182), which fact was verified by the letter written by the Los Angeles office of the Company to its Corcoran office on November 25, 1938 (R. 2607; Board's Exhibit No. 26).

While Mr. Larson was there he presented a form of notice to the employees, prepared by him, which he requested the Company to post on its bulletin board for fifteen days (R. 2635, 2636). With the approval of Mr. Larson certain changes were made in the wording of the original draft of the notice, and the final draft of the notice (R. 2641; Boswell's Exhibit No. 12) was posted on the same day on the bulletin board and was posted for in excess of fifteen days (R. 2643, 2644). That notice read as follows:

"NOTICE TO EMPLOYEES

This company will not through its proper representatives or otherwise, restrain, coerce,

intimidate or interfere with our employees right to self organization as guaranteed by the National Labor Relations Act.

Furthermore this company will not discriminate with regard to hire or tenure of employment because of affiliations with the American Federation of Labor or any other bona fide labor organization.

This notice will be posted for a period of Fifteen Days."

The posting of this notice satisfied Mr. Larson (R. 2902).

On **November 25, 1938**, Prior conferred with Mr. J. G. Boswell, president of respondent Boswell Company, in Los Angeles. Another member of the firm was also present. Prior testified that he told Mr. Boswell he would like to have a complete understanding of all the issues, and have the matter settled (R. 871, 872; 1194-1196). According to Prior, Mr. Boswell stated that the local management was competent to handle the matter and it was in their hands (R. 872). Upon cross-examination Prior at first testified that during the course of his conversation with Mr. Boswell in Los Angeles the latter stated that the notice which had been prepared by, and posted in the plant at Corcoran at the request of, Mr. Larson stated the policy of the Company (R. 1182); however, later in his cross-examination Prior testified that Mr. Boswell could have made this statement; that he was not positive whether he did or not (R. 1197). Prior also admitted on cross-examination that the charge filed by him against the Boswell Company with the Board on November 21, 1938 was also read over by and discussed

with Mr. Boswell during the above mentioned conference, and that the Larson notice was also discussed at this conference (R. 1194, 1195).

Prior in his testimony was rather vague as to the details of his above mentioned conference with Mr. J. G. Boswell. However, the Board itself introduced in evidence a letter dated November 25, 1938, which was written by Fred G. Sherrill, who was present at the conference between Prior and Mr. Boswell, to J. G. Boswell Company at Corcoran (R. 2607; Board's Exhibit No. 26). This letter was written the same day of the conference while the entire matter was fresh in mind and fully and accurately sets forth the discussion which was had at said conference. Said letter reads as follows:

"J. G. BOSWELL COMPANY
Cotton Merchants and Manufacturers
of Cottonseed Products
354 South Spring Street
Los Angeles, California
November 25, 1938.

J. G. Boswell Company
Corcoran
California
Attention of Mr. L. T. Robinson
Mr. G. L. Hammond
Gentlemen:

LABOR MATTERS

Mr. Prior, Secretary and Treasurer of the California State Council of Soap and Edible Oil Workers, called on Colonel Boswell this afternoon.

Colonel Boswell told Prior that the notice to employees, now posted on the bulletin board at Corcoran, covered his position and that of the company. He also told Prior that those employees who had been put off the

property, as outlined in your letter of November 18, would (provided there was work for them) be paid during the period of their absence in accordance with the policy of the company under the National Labor Relations Act, as outlined in the notice.

Colonel Boswell also told Prior that the responsible individuals in the management of the Corcoran plant were Mr. L. T. Robinson and Mr. Gordon L. Hammond, and that while in the conduct of the business and the running of the plant certain authority might be delegated as between these two individuals and others on the company's payroll, that he, Colonel Boswell, was not acquainted with the detail in this respect.

Prior stated that he had a better understanding of the company's business following his talk with Colonel Boswell, at which point he was told that the published notice constituted all there was to the company's position, and anything which Prior may have inferred from the conversation which went beyond this notice was not in keeping with the position of the company, that we felt the notice was clearly in keeping with the National Labor Relations Act, and it was the intention of the company to conduct its affairs strictly in accordance with the law.

Yours very truly,

FRED G. SHERRILL,
Treasurer"

Gordon Hammond testified that on the afternoon of about **November 26, 1938**, or a little later, he had a conference with Prior, Spear and Martin, at which time Prior wanted to know about putting the men who had left on November 18th back to work. Gordon Hammond told them that they would take any of the men, or all of them, back when they had work for them beginning the next morning or any time they wanted to come back. (R. 3024). They asked to see Louis

Robinson but Mr. Robinson was not at the plant that afternoon. This testimony of Gordon Hammond's is uncontradicted.

Prior testified that he had another conference with Gordon Hammond about **November 27, 1938**, at which time Gordon Hammond stated that he was sorry the whole thing had happened and that it wouldn't have happened if he had been there (R. 873). Gordon Hammond also testified to this conference with Prior and stated that Prior asked him if the Company would take all of the men "back in a body." Gordon Hammond testified that he told Prior that they didn't have work for all of them to take them all back in a body (R. 3025). According to Gordon Hammond, Prior asked him if the Company couldn't take them back and put them in the warehouse tearing down stacks of cake and re-stacking them for two or three days and Gordon Hammond said he couldn't do that. Prior then stated that if the Company wouldn't take the men back he would make the Company take them back as he had been up against propositions like that before. Prior threatened to tie up all the cotton, oil and cake in the Boswell Company, calling attention to other plants where they had tied up as much as a million dollars worth of property; that they would tie it up to where it couldn't move. Prior then asked Mr. Hammond to arrange an appointment for him with Louis Robinson for the following day, which Mr. Hammond did (R. 3025, 3026). This testimony of Gordon Hammond was not contradicted.

Prior testified that on **November 28, 1938**, he and

Martin had a conference with Louis Robinson. Prior's testimony on this matter was as follows: He told Mr. Robinson that he and Martin wanted to discuss the matter of these men being replaced on the payroll, that they felt they had been discriminated against and "if someone in authority stated that there was to be no arguments on the job that as far as the other employees were concerned that there would be no opposition." (R. 874). Mr. Robinson wanted to know who the men were that Prior referred to that should be placed back on the payroll and Prior started to name the men. Prior named Spear, and according to Prior, Robinson said that as there was work from time to time that they could use Spear on, that there had been times since November 18 that he would have worked a few days. Prior then named Martin and Prior stated that Mr. Robinson laid his pencil on the desk and said,

"Well, Mr. Martin's machine is just shut down and we can not use Mr. Martin. We might at some time in the future, but we don't have any idea when."

Prior then testified that he stated,

"I told Mr. Robinson if that was the attitude in regard to Mr. Martin, that we could not have some understanding as to him, as well as all the rest of them, there was no need of naming any further, and the conference ended" (R. 875).

Upon cross-examination Prior, when asked concerning this matter, testified as follows: Mr. Robinson asked him just who he had reference to in regard to the re-employment of the union members. Prior said

he would name them and he named Spear, and Mr. Robinson said,

“Well there has been some work we could have used Mr. Spear on since he has been off, and we can use him from time to time as there is work for him,”

and Mr. Robinson wrote Spear's name on a pad (R. 1183). Prior then called the name of Martin and Mr. Robinson laid his pencil down and said,

“Now there is no work. The operation that Mr. Martin was on has definitely shut down, and there is no work for Mr. Martin” (R. 1183);

that they might at some time later use him but that it was indefinite (R. 1184). Prior then stated,

“Well, Mr. Robinson, unless all of these employees are going to be given consideration—they have all been given the same treatment. They are all evicted—and unless all of these employees are going to be given the same consideration, there is no need of discussing the matter further. We are wasting your time, and we are wasting ours.”

This ended the conference according to Prior's testimony (R. 1185).

Prior also testified regarding the above conference as follows:

“Q. Well, the fact is, isn't it, Mr. Prior, that when you were told by Mr. Robinson that Martin's particular job had become exhausted or that that operation had given out, you then told Mr. Robinson that if Martin wasn't taken back, then nobody would come back to work?

A. It is possible that I made that statement.

Q. Isn't that the substance of what you did say?

A. I wouldn't say that was the substance. It is possible I made that statement." (R. 1189).

Louis Robinson testified as follows regarding the above discussion:

"The first man he named was Lonnie Spear. I wrote his name down and told him that we might find some work for Lonnie, that his gin would probably run a few more days.

I don't know if Martin was the next man he named, but if he named anybody between Spear and Martin, I don't remember it.

Then he named R. K. Martin. I told him that Mr. Martin's gin had closed down and we didn't have any work for him at that time.

He said, 'Well, if you don't have any work for Martin, there is no use to talk any further.'

Q. What happened, if anything?

A. He walked out." (R. 2856).

Even though the undisputed evidence shows that Louis Robinson offered to re-employ Spear during the conference of November 28, Prior testified that Spear never applied for work again to his knowledge (R. 1192). Spear testified that Prior didn't inform him about this offer to re-employ him and he heard nothing about it until he heard Prior's testimony at the hearing (R. 1552). The evidence showed that Martin had been working on gin No. 4, which gin closed on

November 25 (R. 3005), and that the other gins were about to close.

The evidence further shows that all of Prior's Union men who left the plant on November 18, 1938 were kept on the payroll and were paid to the end of the time that the respective jobs on which they had been engaged were completed in the normal course of operations. Prior knew this fact and had made photostatic copies of some of the checks received by some of his men (R. 1199). The evidence also shows, without contradiction or dispute, that the operations on which these men had been engaged were completed without the employment of any new or additional men at the plant (Board's Exhibit No. 3).

The Board in an effort to establish that the Boswell Company had replaced with new employees the Union men who left the plant on November 18 introduced in evidence the social security records of a number of other employees of the Company who worked for the Company at various times subsequent to November 18 and prior to the date of the hearing. The employees so named and the undisputed evidence with respect to them were as follows:

Douglas Caffell who was first employed by the Boswell company in September, 1938, was a cowboy who worked at the Reden Ranch, which was leased and operated by the company as a cattle ranch. He worked regularly as a cowboy and had never worked at the company's Corcoran plant (R. 3105, 3106; 3205). His salary, as shown by

Board's Exhibit No. 3, was a monthly salary of \$75.00 per month.

Al Chestnut never worked at the Boswell plant at any time and he was not an employee of the Boswell Company. He was an employee of Peterson Farms Company. In the latter part of the year 1938 the Boswell Company contracted to pump the water off the land in Lovelace Reclamation District in which Peterson Farms Company is located. According to the terms of this contract the reclamation district was to furnish the men to supervise the operation of the pumps and Al Chestnut was one of the men furnished by the district. However, the district did not have any workmen's compensation insurance, so Al Chestnut was carried on the Boswell Company's payroll to keep him covered by compensation insurance and settlement was made therefor upon the completion of the contract (R. 2896, 2897).

Lee Chestnut was also carried on the company's payroll at the same time and under the same circumstances as Al Chestnut and he likewise was never employed by the Boswell Company and never worked at the Corcoran plant (R. 2898).

Ygnacio Galvan—The evidence shows that he had worked at the plant for about ten or eleven years prior to November 18, 1938 (R. 3109, 3110). Furthermore, the evidence shows that sometime after September 2, 1938 he was solicited by Andrade and signed up for the Union (R. 1720, 1721).

He continued to work after November 18, 1938 when work was available. (R. 792, 793).

Peter Galvan—The evidence shows that he worked for the company for a period of six or seven years before November 18, 1938 (R. 3100). The evidence also shows that he was one of the charter members of Prior's union (R. 840; Board's Exhibit No. 4). He continued working after November 18, 1938, when work was available. (R. 796).

Lawrence Galvan—The evidence shows that he had been employed by the Boswell Company for a period of five or six years prior to November 18, 1938 (R. 3100). The evidence also shows that he signed up for membership in Prior's union (R. 1722). He continued working after November 18, 1938, when work was available. (R. 789).

V. C. Galvan—The evidence shows that he had worked for the Boswell Company for a period of about two years prior to November 18, 1938 (R. 3100, 3101). He also worked after November 18, 1938, when work was available (R. 795).

M. S. Escobedo—The evidence shows that he had been employed by the Boswell Company for three or four years prior to November 18, 1938 (R. 3101). He was one of the charter members of Prior's union (R. 840; Board's Exhibit No. 4), and continued to work after November 18, 1938, when work was available. (R. 794).

H. M. Smith—The evidence shows that he

had previously been employed, commencing in September, 1937 (R. 3086; 3101, 3102).

Joseph Melton—The evidence shows he had also worked for the company prior to November 18, 1938, and since October 1, 1938 (R. 783; 3103).

Fred Mathews—The evidence shows he had likewise been employed by the company prior to November 18, 1938, and since May 13, 1938 (R. 780; 3104).

Waldon Bunker—The evidence shows that he was what is known as a "pick-up cowpuncher or cowboy," that he was also employed from time to time, as his services were needed, as a cowboy at the Wreden Ranch, and that he never worked at the Boswell Company's plant at Corcoran (R. 3104, 3105; 3205, 3206).

H. A. Champane—The evidence shows that he was a welder who was employed in the blacksmith shop in March, 1939 (R. 3106); that his work was of a specialized nature and that none of the complaining union employees was capable of performing it (R. 3110).

Charles A. Crye—The evidence shows that he never worked at the Corcoran plant but worked for the Malga Company on the Chamberlin Ranch, which ranch is owned by the Boswell Company and is located a number of miles from Corcoran (R. 799, 3106-3108).

John Watson—The evidence shows he was never employed at the Corcoran plant but worked

on the Chamberlin Ranch (R. 788; 3107, 3108).

Harry Rickman—The evidence shows he was never employed at the Corcoran plant subsequent to November 18, 1938, but since about March 11, 1939 he was employed to drive a bulldozer on the levee in Reclamation District No. 749, which is situated in the Tulare Lake area some distance from Corcoran. (R. 3109).

Vernon M. Rood—The evidence shows that he was first employed by the Boswell Company in August of 1935 (R. 3081; 3083).

There was no evidence or showing whatsoever that any of the Union men who left the plant on November 18 were in anywise qualified to do the type of work which was performed by the employees whose names are hereinabove set forth.

On **November 28, 1938** Andrade, L. E. Ely, E. C. Powell and R. K. Martin were each advised by letter that their employment had terminated because the jobs on which they were employed had been completed (R. 2858; 2862; 2864; 2966).

On **December 6, 1938** Wingo, Spear and Farr were each advised by letter that their employment was terminated because the jobs on which they were employed had then been completed (R. 2868; 2870; 2872).

The only reason for notifying them by letter was that they were in the favorable position of receiving pay without working and they were not at the plant to be notified in person (R. 2934).

Joe Briley, one of the Union men in question, ap-

plied for work shortly after November 18th and was re-employed. He has worked from time to time as work is available since that time. Also, the following men shown by the record to be members of the Union have been employed from time to time since November 18th as work was available: Ygnacio Galvan, Peter Galvan, Lawrence Galvan and M. S. Escobedo.

The evidence is undisputed that none of the men mentioned in the Amended Complaint applied for work since November 18, 1938; that no offer was made by any of them to accept employment, except through Prior, who made the conditional offer that they must all be re-employed, or none of them would return.

On **January 17, 1939**, a meeting was held at the Company's office between Prior, Spear, Farr, Martin, Andrade, Johnston, and Winslow, representing the Federal, and Mr. Louis Robinson and Mr. William Boswell, representing the Boswell Company. In addition thereto, there were present at the meeting Mr. Maurice Howard, a field examiner of the National Labor Relations Board, 21st Region, and Mr. Bill Robinson and Mr. Kelley Hammond, who were employees of the Boswell Company (R. 875, 876, 2875).

Louis Robinson testified that Mr. Howard was carrying on an investigation in the plant and on January 17, 1939 was discussing it with him. Howard contended that after Louis Robinson had told the union men to go back to work on November 18 that they were bodily ejected from the job. Louis Robinson denied this and Howard offered to prove that he was correct. Howard left the office and returned with some of the

men allegedly evicted and questioned them. The men replied that they left the plant because they had gotten together and talked it over and decided that was the best thing to do. Mr. Robinson asked them, particularly Spear, if any one had hurt them or cursed them or ordered them off the property and Spear and the other men said none of those things had occurred. Howard then asked the men if they were afraid that something might happen and some of them said they were. Howard stated to Louis Robinson that the men left the property because they feared violence and that it was the same thing as being bodily ejected. Louis Robinson testified that Spear then described the incidents of November 18th before the men came to the office. After that Howard said if they had done that to him he would have shot all three of the men and that Lonnie Spear would have been fully justified in shooting all three (R. 2876, 2877).

Mr. Robinson also testified that during the course of the meeting with Prior, Howard, and the others on January 17, 1939, he stated, in effect, that no foreman or any one else was authorized by the Company to make any statement regarding any employee's membership or non-membership in any union, and that no employee's position would be affected because of membership in any union (R. 2887); that he made this statement because Mr. Howard discussed the matter with him and he explained the Company's position (R. 2888). Mr. Robinson also testified that he had made substantially the same statement to Mr. Prior during the course of the conversation which took place about

September 1, 1938, and also in the conversation which took place on the morning of November 19, 1938. (R. 2889).

Mr. Prior's version of this meeting was as follows: He testified the union representatives stated that on November 18, Bill Robinson and Kelley Hammond had shut down some of the machinery in the gins at the time of the eviction of the union employees (R. 876). Bill Robinson and Kelley Hammond admitted they did shut down some of the machinery. Mr. Louis T. Robinson stated that neither Mr. Bill Robinson nor Mr. Kelley Hammond were authorized to cut the power off the machinery, and that no one had been authorized on behalf of the Company to interfere with the operations of the plant. Prior testified that was all that he recalled regarding what was said at the conference. (R. 876, 877).

Mr. Robinson testified that on the morning of January 18, 1939, Mr. Howard again returned to the office, and they had a further conversation. No one else was present. (R. 2886). In this second conversation with Mr. Howard the latter stated that he wanted the Company to discharge all the non-union employees who had taken part in the events of around 10:00 o'clock of the morning of November 18, and wanted the Company to hire union men in their places, and wanted the Employees' Association dissolved. Mr. Robinson told him there was no labor dispute between the management and its employees; that any dispute that existed was between two groups of employees; that the Company was not going to fire anybody that

was giving satisfactory service on the job; and that the company had nothing to do with the organization of the Employees' Association and would make no efforts or attempts of any kind to dissolve it. Mr. Howard then stated that if Mr. Robinson did not do that, he would call the Labor Board hearing and Mr. Robinson would get a lot worse. Mr. Howard took a little pamphlet out of his pocket that had a number of decisions in it and pointed out some of the decisions that had been found at labor board hearings. Mr. Robinson told Mr. Howard that he thought none of those cases were similar to the Company's position and he would stand just where he told him (R. 2889, 2890). Mr. Howard then said "All right." "Then you will get the board hearing." (R. 2890).

Mr. Robinson's testimony with respect to the foregoing conversations with Mr. Howard were not denied, and his version of said meetings, particularly that of January 17, 1939, is substantiated by the testimony of Walter Winslow (R. 1687), George Andrade (R. 1898-1903, and L. A. Spear (R. 1589, 1590), all of whom attended said meeting and testified with respect thereto.

On January 18, 1939, Prior again called at the Boswell Company's office and conferred with Louis Robinson. He stated that Mr. Maurice Howard had suggested the conference (R. 878). This was the last time Prior conferred with any representatives of Boswell Company (R. 878).

Regarding his conference with Prior on **January 18, 1939**, Louis Robinson testified that Prior called on

the afternoon of that day and said he was calling on Robinson at the suggestion of Mr. Howard and he wanted to know if there had been any change in the company's position after Mr. Howard's visit. Robinson stated that he told Prior, "No, Mr. Howard's visit had not changed the company's position at all" and that that was all of the conversation. (R. 2891, 2892).

Mr. Robinson's testimony with respect to the two conferences held with Mr. Howard on January 17th and 18th, 1939, respectively, in which he outlined the Boswell Company's labor policy, is also substantiated by the fact that on **January 20, 1939**, Prior personally inserted a notice in a newspaper published in Corcoran, California, known as the Corcoran News (R. 970; 1129, 1130), which said notice read as follows:

"ATTENTION

J. G. BOSWELL CO. EMPLOYEES

"Many employees of the J. G. Boswell Company have stated that foremen of the company have told them that membership in the American Federation of Labor would affect their employment with the company.

"Mr. Louis Robinson, general manager of the Corcoran plant, stated in the presence of the following men who attended a meeting in his office January 17, 1939;

"Maurice Howard, Field Examiner of the National Labor Relations Board

Wm. Boswell, of the company.

E. F. Prior, Sec.-Treas., California State Council of Soap and Edible Oil Workers

Wm. Robinson, Employee of company

Kelly Hammond, employee of company

L. A. Spear

O. L. Farr
 R. K. Martin
 W. R. Johnston
 Elgin Ely
 George Andrade
 Walter Winslow

Officers and members of the Cotton Products and
 Grain Mill Workers Union No. 21798:

"NO FOREMAN OR ANYONE ELSE IS
 AUTHORIZED TO MAKE ANY STATEMENT
 REGARDING ANY EMPLOYEE'S MEMBER-
 SHIP OR NON-MEMBERSHIP IN ANY UNION
 BY THE COMPANY AND THAT NO EM-
 PLOYEE'S POSITION WOULD BE AFFECTED
 BECAUSE OF MEMBERSHIP IN ANY
 UNION."

After the declaration of company policy by
 Mr. Robinson, no employee of the company should
 be afraid to attend a meeting for the purpose of
 learning the history and gains made by organiza-
 tion in their industry—they really owe it to them-
 selves to learn everything possible about these
 new developments.

A MEETING WILL BE HELD IN THE
 CORCORAN AMERICAN LEGION HALL

January 23, 1939, at 8:00 P. M.

for the purpose of discussing labor problems with
 the employees of this industry.

COTTON PRODUCTS & GRAIN MILL WORK-
 ERS UNION No. 21798

R. K. MARTIN, Secretary.

CALIFORNIA STATE COUNCIL OF SOAP AND
 EDIBLE OIL WORKERS

E. F. PRIOR, Secty.-Treas."

The evidence shows without dispute that the con-
 ference which Prior had with Louis T. Robinson on
 January 18, 1939, was prompted by and was the direct
 result of the conference above mentioned which had

taken place between Mr. Robinson, Mr. Prior, Mr. Howard, and others on January 17, 1939, and the one between Mr. Robinson and Mr. Howard on the morning of January 18, 1939.

The only complaining Federal member who was questioned regarding the above mentioned notice by Prior was Johnston. He testified he saw the notice in the paper, and that he never heard anything which led him to any other opinion regarding the policy of the Boswell Company than the statement contained in said article. (R. 972).

Prior testified that in the evening of **January 21, 1939**, a meeting of union members was held in his hotel room in Corcoran and the matter of picketing the Boswell plant was discussed. That in addition to Prior there were present at this meeting Spear, Powell, Johnston, Martin, Wingo, and Andrade (R. 883). Prior testified that at this meeting he explained the reasons why picketing had not been previously instituted, but testified:

“We felt that it would be necessary to place the pickets down there and make the boycott still more effective. And the members of the organization present voted to take that action.” (R. 884).

The evidence shows that the institution of picketing was voted by only six members of the Union. There was no evidence whatever to show that the meeting at which this vote was taken was a regularly called meeting.

On cross examination, Prior was asked to state what, if any, requirement is contained in the constitution and by-laws of the American Federation of

Labor, so far as a quorum of union membership necessary to authorize picketing is concerned, and replied that this is a matter which is left strictly to the local autonomy of all local unions. He was then asked whether, in the case of this particular Local, any rule or custom had been adopted with respect to the number of members necessary to constitute a quorum to authorize picketing. Prior stated there had been no definite rule set up with regard to that matter by the Local pertaining to picketing; that those matters are just taken care of the same as any other routine business of the organization. That the only rule they have in any local union is the rule pertaining to the calling of a strike. (R. 1132-1135).

The evidence shows very clearly that the vote on picketing was taken at merely an informal meeting of only a few of the Federal members.

Picketing was thereafter instituted on or about **January 23, 1939**. (R. 883), for the purpose, as Prior testified, of making the boycott still more effective. (R. 884). Picketing consisted of placing two men in an automobile on the side of the public highway near the Boswell Company's plant, and a sign reading "A. F. of L. picket car" was placed on the car and according to Prior's testimony as trucks came in with merchandise or came to receive merchandise the picket stepped out of the car and explained the controversy between the Union and the Company and requested their co-operation. (R. 885, 886).

Among the members of the Federal who participated in these picketing activities were Andrade, Wins-

low (R. 886), Griffin and Elgin Ely. (R. 1869).

On **January 30, 1939**, a group of farmers and others who were apparently incensed because of the picketing gathered around the picket car and dispersed the pickets. Thereafter on **February 6, 1939**, Prior filed his second amended charge against respondent Boswell Company, and also included therein a charge against Associated Farmers of Kings County, Inc., alleging that both Boswell Company and Associated Farmers were responsible for the gathering of the group of men which dispersed the pickets. However, this charge was never served upon any of the respondents and the Board in its Decision and Order found that neither Boswell Company nor Associated Farmers were responsible for the dispersal of the pickets.

On **March 2, 1939**, Mr. C. H. Glenn, who was the President, Manager and Principal Stockholder of respondent Exchange, discharged Margaret A. Dunn.

On **March 4, 1939**, Prior filed his third amended charge and the acting Director of the Twenty-first Region issued a complaint on said date against respondents Boswell Company and Associated Farmers. After the matter had been set for hearing, on **March 13, 1939**, and the complaint had been served the Board indefinitely continued the hearing without assigning any reason therefor.

On **March 14, 1939**, Mrs. Dunn filed a charge with the office of the Twenty-first Region of the Board against the Corcoran Telephone Exchange. This charge was signed by her personally; however, the

charge was never served on any of the respondents.

On April 14, 1939, Mrs. Dunn wrote the office of the Board in San Francisco requesting that her charge be dropped. (R. 2525; Board's Exhibit No. 23).

On May 4, 1939, Prior signed and filed his fourth amended charge against all three of the respondents and an amended complaint was issued and served and the case went to hearing before trial examiner on May 18, 1939.

The case against the Exchange is separately discussed hereafter and is mentioned in the foregoing recital of facts merely for the purpose of showing the sequence of events.

B. THE ALLEGED INTIMIDATION, RESTRAINT AND COERCION.

The alleged intimidation, restraint and coercion alleged to have been practiced by the Boswell Company consisted solely of statements in opposition to the Federal alleged to have been made by various employees of the Boswell Company. The Board in its purported Decision and Order, and counsel for the Board in their brief, laid much emphasis upon that testimony, all of which was hearsay and was admitted over respondents' objections.

The evidence discloses that none of these alleged statements was made by anyone in a responsible position who had authority to bind the Company and that if such statements were made, they were completely unauthorized and can not be binding upon respondent.

In considering this question it should be borne in mind that the evidence fails to show any antagonism or hostility whatsoever by any of the officials of the Company toward the Federal. On the contrary, the evidence shows by the testimony of the Board's witnesses, as well as the witnesses called by respondents, that the Boswell Company gave the Federal and its officers, members, and representatives every consideration; that Louis Robinson and Gordon Hammond met with the Federal's representatives on every occasion that they requested conferences; that they adopted suggestions offered by the Federal's representatives regarding the operation of the oil mill gins, and that they re-employed and in some instances raised the wages of Federal members after the employment of such men had been discussed with the management by Federal representatives. These admitted facts show beyond question that the Boswell Company was not hostile to the Federal.

The Board repeatedly in its purported Decision and Order, and counsel for the Board in their brief, makes reference to alleged anti-union statements by so-called supervisory employees. However, an analysis of the evidence discloses that there were no "supervisory employees" at the Corcoran plant other than Louis T. Robinson and Gordon Hammond.

The evidence clearly shows without contradiction that Louis Robinson was general manager for San Joaquin Valley of the Boswell Company (R. 2578, 2836, 2837); that Gordon Hammond was the plant superintendent of the Corcoran plant (R. 2837); that the au-

thority of Gordon Hammond and Louis Robinson was limited by the head office but that they were the only persons in Corcoran who were authorized to speak for the Boswell Company concerning its business, or to bind the company (R. 2838). Gordon Hammond was in charge of the manufacturing end of the plant and Louis Robinson was in charge of securing raw materials, financing and collection (R. 2838). The evidence is clear that there was no one at the Corcoran plant, other than Louis Robinson and Gordon Hammond, who had any authority from the Boswell Company to employ or discharge any employees (R. 2634, 2839, 2840) or to speak or act for the Company on any employment matter (R. 2902, 2904, 2905). No one at the plant carried the title of foreman and Louis Robinson testified that he would describe Gordon Hammond as the foreman. However, there are employees who directed the manner in which work on particular jobs should be done (R. 2629-2631). None of these employees who direct certain jobs keep the time for other men on the same or any job. Gordon Hammond keeps the time for all of the men (R. 3182). There was no evidence that any of the men above mentioned, or any employees, other than Gordon Hammond or Louis Robinson possessed any authority to speak for the company on any question of its labor policy, or upon any other policy.

The following is an example of the evidence in the record: The undisputed evidence shows, for example, that **Rube Lloyd** is an expert carpenter and construction man (R. 2630), that he does not have any men under him at the plant, that when he does a job out-

side the plant he takes the men designated by Gordon Hammond to do the job, that Gordon Hammond usually goes with him to lay out the work, that Lloyd directs the work and Lloyd and the other men do the work. (R. 3179). He has no authority to employ or discharge employees (R. 2634).

O. W. Busby is the most experienced man in the machine shop (R. 2631). He has no authority to hire or discharge employees (R. 2634), and he does not keep time for any men working with him (R. 3182).

The only evidence regarding **Sitton** was that he was a nephew of Gordon Hammond and had worked for the company for about two and one-half years (R. 3147). He did not have authority to hire or fire employees (R. 2634).

The absence of any authority to hire or fire or speak for or bind the Company applies to each of the other men whom the Board contends are supervisors, to-wit: Tom Hammond, Joe Hammond, Kelly Hammond and Bill Robinson. (R. 3182, 2634, 2837-2839, 2629, 2630). The fact that the employees themselves recognized this limitation of authority is shown by the following testimony:

Martin testified that on November 18, 1938, after the trouble which occurred at the plant between union and non-union men on that day, they went into the office of Gordon Hammond who was in Los Angeles at that time. Among those present in the office were Rube Lloyd, Bill Nichols and Bill Robinson (R. 1217, 1218). In spite of the presence of those persons in the office he testified as follows: "We just waited there

for a long time, never did nobody with **authority** show up, and finally Mr. Robinson put his head out of the door and told us to go back to work, he would be around to straighten it out" (R. 1218, 1219, corrected pages 1277, 1278). Martin further testified that on the same day, after they left Gordon Hammond's office and went back to work, that he had a conversation with Bill Robinson during which Martin stated, "If Mr. Hammond and Mr. Louis Robinson comes down here and says 'Go home' all right, but until they do we won't" (R. 1222). He explained that he was referring to Gordon Hammond and Louis Robinson (R. 1240). According to Martin, Tom Hammond was among those present at the gins at that time (R. 1220).

Spear testified that on November 18, 1938, after they went back to the gins there was some difficulty about getting the non-union men to work with the union men (R. 1513). He stated that Kelly Hammond (R. 1508), Bill Robinson (R. 1509), Joe Hammond (R. 1517) and many others were around the gins, but he testified as follows: "as well as I can recall, I sat down on the stairs, in fact, I was stalling for time. I was **waiting for somebody to come around.**" (R. 1517 1518). He testified that he was waiting for Louis Robinson (R. 1602).

The only other testimony relating to the duties of the above mentioned men was the testimony of some of the complaining Federal members that they had from time to time been directed in the manner of doing their work by certain men above mentioned. Consequently, there is no evidence to support any finding

or conclusion that respondent Boswell Company was bound by any acts or statements by the persons hereinabove mentioned, and the evidence shows the contrary to be true.

The evidence is also quite clear that all of the men complaining in this proceeding recognized the fact that only Gordon Hammond and Louis Robinson could speak for the Company. One of the clearest illustrations of this recognition is the fact that in spite of all of the alleged anti-union statements which the complaining Federal men related, the alleged statements did not have the effect of preventing any of those men from joining the Federal. Every man who testified to any hostile statement against the Federal by other employees of the Boswell Company proceeded to apply for membership and join the Federal in spite of those statements. No evidence was introduced to show that the Federal lost a single member by reason of any action on the part of respondent Boswell Company.

A further illustration of the fact that Gordon Hammond and Louis Robinson were recognized by everyone as the only persons with authority was Prior's testimony that one of the reasons for his conference with Gordon Hammond on November 17th was that he wanted a clarification "by **someone in charge**" as to the status of Tom Hammond and Joe Hammond (R. 1158, 1159, 1161). Martin and Spear were with him during that conference and were told by Gordon Hammond that no one but Gordon Hammond had the right to hire or fire (R. 1158, 1159, 1163, 1164), and that neither Tom Hammond nor Joe Hammond was au-

thorized to make any statements against the Federal (R. 1159, 1163, 1164).

Prior testified that in a conference between himself, Martin and Louis Robinson on November 28, 1938, he told Louis Robinson that if "someone in authority" stated there were to be no arguments on the job there would be no opposition to the Federal. (R. 874).

That Gordon Hammond, with the exception of Louis Robinson, was the only one at the plant who had any authority to hire or fire men, and that his authority was generally recognized by and known to the employees and prospective applicants for work is also shown by the fact that in practically every instance the applicants for work made personal application to him.

In illustration of the above the following are some of the instances shown by the record where the complaining witnesses applied to Gordon Hammond for reemployment after a lay off:

H. N. Wingo testified that he applied to Gordon Hammond for work in the gin in October, 1938 (R. 1632, 1633).

L. E. Ely testified that he applied to Gordon Hammond when he was reemployed in October, 1938 (R. 1826).

W. R. Johnston testified that he applied to Gordon Hammond for work October 10, 1938 (R. 963).

O. L. Farr testified that he saw Gordon Hammond about reemployment in the fall of 1937 (R. 1027).

George J. Andrade testified that upon at least two occasions he applied for work after a previous lay off (R. 1715-1718).

There was no evidence that the Company ever held out any of the persons referred to in the purported Decision and Order as supervisory employees to be persons having authority to advise others regarding labor or union relations. On the contrary the Boswell Company had expressly denied that any of those persons had such authority or authority to hire or fire and this denial of authority was communicated to various Federal men and other employees. In addition to these facts, the evidence shows that instructions had been given to various employees not to make any statements against the Federal, or any other union, and that the alleged statements, if actually made by any of the employees mentioned, did not have the effect of hindering or discouraging the Federal's members, or any other employees of the Company, in any respect whatsoever.

There was no evidence whatever which would support the Board's findings and conclusions that Boswell Company either promoted and/or encouraged, or that it ratified any of the alleged discriminatory acts or statements on the part of any of its employees.

The neutral attitude of Boswell Company toward the right of its employees to join the Federal or any other union they might see fit, and its attitude of cooperation with the Federal was demonstrated time and again both to the members of the Federal and their officers and representatives, and to the employees as

a whole. For instance, the notice posted at the plant at the request of Mr. Larson of the Board was posted on the bulletin board in the office near the pay roll window in the main waiting room where employees were accustomed to look for notices of various kinds posted by the Company, such as Social Security bulletins, and where it could be readily seen by any and all of the employees. This notice remained posted for a period of more than fifteen days. (R. 2643, 2644). This location was approved by Mr. Larson of the Board. (R. 2644).

It is stated in the Board's brief (Footnote p. 20) that this notice was posted at the "insistence" of a Board agent, the implication being that the Company was not willing to post the notice. There was no evidence which would justify this statement, but on the contrary the evidence showed that the Company was entirely agreeable to posting the notice and that the officials of the Company did not in anywise object to or raise any issue regarding the posting thereof.

Another specific instance of the Company's position with respect to its employees' right to join any labor organization or not as they saw fit was Farr's testimony that in a conversation with Gordon Hammond in the latter part of August, 1938, Mr. Hammond told him "I can't tell you not to join a Union, for it is agin' the law for me to tell you that." (R. 1033, 1034).

There was absolutely no evidence to warrant the inference as found by the Board that the alleged discriminatory remarks made by subordinate employees of the Company, such as Tom Hammond, Joe Ham-

mond, Bill Robinson and the other alleged supervisors, represented the attitude of the Company or to support the conclusion that the Company was as responsible for these alleged activities as if it had directed them in advance.

The testimony clearly demonstrates and shows that if in fact, there was any anti-union conduct or statements on the part of any of the so-called supervisory employees, such conduct and statements were merely isolated expressions of individual opinion made without the knowledge of the Company and contrary to the policy of the Company and its instructions to them, and the record shows that whatever may have been said or done by them left the employees unmoved.

The Board in its decision lays much stress upon, and in its brief calls particular attention to, a number of so-called anti-union statements alleged to have been made by Tom Hammond, Joe Hammond and Bill Robinson at various times to certain of the complaining witnesses, including Spear and Farr.

Spear testified that some time in September, 1938, Joe Hammond accused him of being president of the union, which fact Spear denied (R. 1576). However, this did not deter Spear from applying for membership in the Federal on September 2, 1938 (R. 1493; 1576) and later becoming its president. Spear admitted that as early as July, 1938 Gordon Hammond had told him that so far as the Company was concerned Spear was absolutely free to join any union he wanted; and that Gordon Hammond made similar statements to him

upon several later occasions (R. 1575).

The evidence shows that Farr signed an application for membership in the union September 2, 1938 (R. 1014; 1052). Farr testified upon direct examination that during the latter part of August, 1938, Gordon Hammond asked him if he was a member of the union and spoke to him about reports that he was carrying a receipt book and signing up members on the job, to all of which Farr gave a negative reply (R. 985). He also testified that in September, 1938, both Joe Hammond and Tom Hammond spoke to him regarding the union (R. 985; 994), and that Tom Hammond also spoke to him again on November 17, 1938, (R. 989-992); and that between March and August, 1938 he was asked by Joe Hammond and Tom Hammond several times if he was a member of the union (R. 1035). The evidence is clear that Farr joined the union after most of these alleged anti-union statements were made. Moreover he reluctantly admitted upon cross-examination that Gordon Hammond had told him as early as August, 1938, that it was against the law for Gordon Hammond to tell him not to join the union (R. 1033, 1034).

Martin was also one of the complaining witnesses who testified to alleged anti-union statements made to him by Tom Hammond in the latter part of September, 1938 (R. 1207-1209). The evidence shows that Martin joined the union September 2, 1938 and that he talked with numerous other employees about the union after he joined, but nevertheless he was later re-employed on October 10, 1938 at an increase in pay. (R. 1230,

1231). Martin was also a member of the union committee headed by Spear which conferred with Gordon Hammond about October 5th or 10th, 1938, at which conference the matter of pressure being put on some of the union members was called to Gordon Hammond's attention, and Gordon Hammond stated that if anything like that was going on, he did not know about it and did not authorize it (R. 1520-1527).

Wingo and Andrade each testified to alleged anti-union statements on the part of some of the so-called supervisory employees (R. 1616-1618; 1702, 1703), but the evidence shows that they each joined the union on September 2, 1938 after the alleged statements were made (R. 1616; 1702).

As a Matter of Law the Boswell Company is not responsible for and is not bound by anti-union statements alleged to have been made by some of its employees.

Under the law as it has existed for many years, an employer cannot be held responsible for the statements or actions of his employees unless they are acting or speaking within the scope of their authority. This is one of the fundamental principles of law which existed long before the enactment of the National Labor Relations Act. If an employer were held responsible for every act or statement by any employee working for him, an intolerable burden would be placed upon the employer. It would be impossible for an employer to control the individual thoughts and actions of the numerous employees necessary in the operation of

any industrial plant. Since the adoption of the National Labor Relations Act, the courts have adhered to the principles previously existing and have held that no such burden or responsibility is placed upon the employer for the acts of his employees outside the scope of their authority.

Consequently, in order to hold an employer responsible for the acts and statements of his employees, the Board has the burden of proving (1) that the statements or actions were made or done by employees who were authorized to speak for their employer and (2) that those statements or acts were made or done on behalf of the employer and that they did not merely represent the individual opinions of the employees making the statements or doing the acts. Some of the cases in which the above principle has been applied to the National Labor Relations Act are the following:

Ballston-Stillwater Knitting Co. v. N. L. R. B.

(Seventh Circuit, August 1, 1938), 98 Fed. (2d) 758;

Cupples Co. Manufacturers v. N. L. R. B.

(Eighth Circuit, August 1, 1939), 106 Fed. (2d) 100;

N. L. R. B. v. Sands Manufacturing Company

(January 12, 1939), 306 U. S. 332; 83 L. Ed. 682;

N. L. R. B. v. Empire Furniture Co.

(Sixth Circuit, November 8, 1939), 107 Fed. (2d) 92;

N. L. R. B. v. Swank Products

(Third Circuit, December 29, 1939), 108 Fed. (2d) 872;

C. G. Conn Limited v. N. L. R. B.

(Seventh Circuit, December 22, 1939), 108 Fed. (2d) 390;

Peninsular and Occidental S. S. Co. v. N. L. R. B.
(Fifth Circuit, July 29, 1938), 98 Fed. (2d) 411.

All of the foregoing cases are authority for the proposition that an employer is not responsible for the anti-union statements of his employees, or **even his supervisory employees**, unless the evidence shows that the acts or statements were done or made on behalf of the employer and not as a mere expression of the individual employee's opinion.

In **N. L. R. B. v. Sands Manufacturing Co.**, *supra*, the evidence showed that the employer there involved had negotiated with the complaining Union on various occasions, but there was testimony by one of the employees that his superior, a shipping clerk, told him that they were trying to break the Union and would hire him back when that was done. There was also testimony that the superintendent had stated to this employee that the A. F. of L. Union would be preferable as it was more conservative and not so likely to strike. The board contended that the employer was bound by these statements. The Supreme Court stated (83 L. Ed. 689):

"Neither of the men who are quoted held such a position that his statements are evidence of the company's policy * * * and the inference of hostility to MESA drawn from their testimony does not, in any event, amount to a scintilla when considered in the light of respondent's long course of conduct in respect of Union activities and in dealing freely and candidly with MESA."

In **Cupples Co., Manufacturers v. N. L. R. B.**, *supra*, there was considerable evidence that a certain fore-

lady and foreman, both of whom had authority to make recommendations relative to the efficiency of employees, had made many statements against the complaining Union and in favor of an independent Union. The Board contended that the employer was bound by these statements and actions and was responsible therefor. The court held that the employer was not responsible for these actions, and stated at pages 114-116:

"It seems to us that the question of her title is unimportant, and that the vital question is whether, under the evidence, she was or could reasonably be found to be the representative of the Company in connection with her activities relating to the two labor unions.

"It is elementary that a principal is only bound by the acts of an agent which are within the scope of the actual, implied or apparent authority of that agent. Miss Weitzel had no actual authority from the Company to encourage or discourage memberships in labor organizations. There is no evidence which would support a finding that she had implied authority to do so. Implied authority is nothing more than actual authority circumstantially proved. * * * So far as her apparent authority is concerned: 'It is only acts within the scope of the apparent authority with which the principal clothes the agent, not those within the scope of the apparent authority with which the agent wrongfully clothes himself, without the assent or knowledge of his principal, that are binding upon the latter.' * * *

"There is no evidence in the record that Miss Weitzel was ever held out by the Company as a person having authority to advise others with respect to joining or not joining labor organizations. What her fellow-employees of the match department may have assumed her authority to be and

what she may have represented it to be, we regard as unimportant in so far as the Company is concerned, since there is no proof that her acts which are complained of were done at its direction or with its knowledge or consent."

The court in the above case also pointed out that instructions had been given by the employer to the foreman that the law permitted the employees to organize and to refrain from discouraging them; that there was no evidence that the management knew of the threats, authorized them, or ratified them; that the employees apparently paid no attention to the alleged threats and that they had ready access to those in actual authority to complain of any grievances. The court stated as follows:

"If the persons making such threats had no power to discharge, it is difficult to see any more reason for imputing such threats to the employer than for imputing to him a similar argument made by an ordinary employee in soliciting members

— * * *

"We think that the doctrine of respondent superior cannot, under the circumstances disclosed by the evidence in this case, be invoked by the Board to justify its finding that the Company dominated, interfered with and supported the formation or administration of the Association. As already pointed out, Miss Weitzel, in encouraging and attempting to influence members of the force with whom she was associated to join the Association, was engaged in the performance of no duty for the Company, was acting outside of the scope of her employment, and can hardly be said to have been furthering the business of her employer, even though she may have believed that she was doing so. If the doctrine is applicable to her situation, it would seem to be equally applicable

to every other employee who solicited members for the independent union, and the necessary result would be that all such employees might be regarded as acting for the Company and not for themselves." (emphasis supplied).

In *N. L. R. B. v. Empire Furniture Company*, supra, there was evidence that several of the foremen, **with power to hire and fire**, had made many statements antagonistic to the complaining Union. The Court, in holding that the employer was not responsible for these statements, stated that there was no evidence that these observations reflected the view of the management, and stated as follows at page 94:

"It appears from the record that several of the respondent's foremen were hostile to unionization. While these foremen were entrusted with complete responsibility for hiring and discharging men, it by no means follows from this circumstance that an irrebuttable or even a reasonable inference arises that a lay-off or discharge was for union activity when the annual labor turnover was 200 and there is cumulative evidence contra. We must search the record for something more substantial and definite to sustain the findings."

In *C. G. Conn Limited v. N. L. R. B.*, supra, the court stated that in considering the anti-union statements made by certain supervisory employees it was necessary to consider the general attitude of the employer in respect to the union. The court pointed out that the employer was at all times willing to meet and did meet with the union representatives and discussed problems with them, that there was no evidence to show that the management was unfriendly toward

the union, and there was no evidence of a refusal to bargain with it. Furthermore, the evidence showed in that case that the employer had instructed the foreman and supervisors that membership in a union was not to be considered in hiring men. Under these circumstances, the court stated that even if such statements were made they could not be binding upon the employer in view of the employer's attitude toward the union.

In **N. L. R. B. v. Swank Products**, *supra*, the court stated:

"Because men expressed dislike to organized labor does not, as the Board suggests in its argument, indicate that they must be acting for the management."

In **Martel Mills v. N. L. R. B.**, 114 Fed. (2d) 624, (C. C. A. 4, 1940,) the superintendent, who was a policy-making officer of the respondent, made certain anti-union statements, but the court set aside the Board's order in its entirety, stating, (p. 633)

"In the absence of evidence of any policy of proscribed discrimination, an employer should not be held strictly accountable for every isolated utterance of a policy-making officer concerning union activities And, where the conduct and actions of the employer fail to indicate any violation of the Act, an assemblage of unrelated, unconnected expressions of opinion does not very deeply impress this court."

In **N. L. R. B. v. Mathieson Alkali Works, Inc.**, 114 Fed. (2d) 796 (C. C. A. 4, 1940), the Court denied the Board's petition for enforcement where the evidence showed that although a number of foremen, of supervisory capacity, had made occasional anti-union

expressions, but the company had pursued a neutral policy and did not authorize such statements. The court in its opinion stated:

“Sporadic activities on the part of foremen, however, not authorized by the employer and not resulting in interference with or domination of the right of the employees to organize and select bargaining representatives of their own choosing, should not be allowed to nullify a choice freely made by a majority of the employees acting on their own initiative.” (p. 799)

“There is some evidence of sporadic and occasional expressions of anti-union sentiment on the part of a few foremen including one or two in addition to the ones heretofore mentioned, but, without reviewing this in detail it is sufficient to say that it furnishes no proof of any unfair attitude on the part of respondent and was not of a character to justify a cease and desist order on the ground that the expressions were attributable to respondent under the doctrine of respondent superior. If there were evidence that these foremen were speaking with the authority of respondent, or if their expressions of sentiment were so numerous or of such a character as to justify the inference that they were made with respondent’s approval in furtherance of an anti-union policy, an order directing respondent to cease and desist from interfering with its employees in the exercise of the rights guaranteed by Sec. 7 of the Act would be proper, even though it should not appear that anyone’s affiliation had been changed thereby; But mere isolated expressions of minor supervisory employees, which appear to be nothing more than the utterance of individual views, not authorized by the employer and not of such a character or made under such circumstances as to justify the conclusion that they are an expression of his policy,

will not ordinarily justify a finding against him." (p. 802)

"In each case, the question of the employer's responsibility for expressions of supervisory employees is to be determined by the facts of the case. If the supervisory employee is of such a position as to represent the employer in conducting a branch or department of the business, his expressions and activities with respect to organization would ordinarily constitute effective interference with the exercise of rights by employees and should be attributed to the employer, in application of the respondeat superior doctrine Even if the supervisory position of the employee is of minor character the employer may be held responsible for his conduct if the surrounding circumstances are such as to reasonably justify the inference that it is an expression of the employer's policy or is approved by the employer. . . . Where, however, the employee has only minor supervisory authority and the expression of views appears to be nothing more than the expression of ideas of his own, contrary to the neutral policy assumed by the employer, it cannot reasonably support a finding of violation of the Act on the part of the employer." (p. 803)

In **The Press Co., Inc. v. N. L. R. B.**, 118 Fed (2d) 937 (Ct. App., D. C. 1940) the court stated: (p. 942).

"Before oral statements of an employer may be held to be an unfair labor practice, it must appear that they interfered with, restrained, or coerced employees in the rights guaranteed by the Act, that is to say, the right to join labor organizations, to bargain collectively, and to engage in concerted activities."

In **E. I. du Pont de Nemours & Co., et al. v. N. L. R. B.**, 116 Fed. (2d) 388, (C. C. A. 4, 1940) the court in holding that the employer was not bound by sundry

anti-union statements of its supervisory employees, reaffirmed its holdings and the language used in *Martel Mills Corporation v. N. L. R. B.*, supra, and in *N. L. R. B. v. Mathieson Alkali Works, Inc.*, supra.

In *N. L. R. B. v. Sparks-Withington Co.* 119 Fed. (2d) 78, (C. C. A. 6, 1941), the court in denying the Board's petition for enforcement of dis-establishment order which was based upon certain activities of foremen, stated: (p. 82)

"These incidents, in the light of what we have noted about the company's hand-off policy, sift down simply to instances of personal zealotness and individual bias against the union on the part of two supervisory employees, Poole and Darling. There is no evidence that their activities or statements represented company policies; there is positive evidence to the contrary. The statements involve little more than expressions of individual opinion, which, so far as the record goes, left the employees unmoved."

In *Quaker State Oil Refining Corp., v. N. L. R. B.* 119 Fed. (2d) 631 (C. C. A. 3 1941), the court set aside the Board's order for reinstatement upon the ground that there was no substantial evidence. The court held the company was not responsible for anti-union statements of two of its supervisory employees, since those statements were not authorized or made in the course of their duty. The court stated: (p. 632)

"The supervisors in question were Healy, the field or pipe line superintendent, and McElhatten, the superintendent of maintenance at the refinery. Healy asked one employee what the employees figured could be gained by membership in the union and said it would be lots cheaper and the employees just as far ahead if they hired a

local attorney to represent them rather than putting out quite a lot of money and not getting much in return for it. He made similar remarks to another employee and declared to a third who said he hoped to gain seniority rights that there was no such thing. To a fourth he said he did not see how the Union could benefit the employees and that he believed the petitioner would shut the plant down before giving recognition to it. McElhatten stated to one employee with reference to the welding of certain tubes that prior to the Union that work would have been done at the petitioner's shop but after the Union they intended to send the work away. He also said that in the future they would let out to contractors what work they could. He made a similar statement to another employee. In the case of Healy none of the employees to whom he talked was under his supervision.

"It is quite clear that all of the conversations took place casually in the course of conversations between the individuals concerned. There is no evidence that they had the slightest effect in actually preventing or discouraging membership in the Union. The Board nevertheless found that the petitioner was responsible for the statements made by Healy and McElhatten and that thereby it interfered with its employees in the exercise of the rights of self-organization. We do not think that this finding is supported by substantial evidence. Isolated statements by minor supervisory employees made casually in conversations with fellow employees without the knowledge of their employer and not in the course of their duty or in the exercise of their delegated authority over those employees ought not to be too quickly imputed to their employer as its breach of the law. This is particularly so where, as here, there is no evidence of any policy on the part of the employer to authorize or encourage opposition to union activity."

In **Diamond T. Motor Car Company v. N. L. R. B.**, 119 Fed. (2d) 978, 982 (C. C. A. 7, 1941), it appears that the superintendent of the company not only ran a newspaper article and spoke to the assembled employees and by indirection expressed a preference for an inside union, but told one of the employees directly that the company would not stand for an outside union and they would lose their jobs. The court said that this statement should be considered in the light of the effect it had upon the listener, whom it apparently did not impress, and that moreover the man who was highest in authority at the plant subsequently told the men they were free to join any organization of their choice, and that this expression overrode and disavowed the previous expression of the superintendent.

In **Wilson & Co., Inc. v. N. L. R. B.** 120 Fed. (2d) 913 (C. C. A. 7, 1941), the court held that unauthorized statements by a subordinate superintendent of the employer suggesting that the striking employees forget the union and return to work was not evidence of unfair practices by the employer. The court said: (p. 920).

"Assuming that the statements are susceptible of the construction placed upon them, which we doubt, there is no evidence that the superintendent or any other officer of petitioner authorized them, or that they were made in conformity with petitioner's policy. In fact, the record demonstrates conclusively that petitioner's policy was to the contrary."

When the principles laid down by the courts in the foregoing decisions are applied to the facts of

the instant case, it is evident that the Boswell Company is not, and cannot be held responsible for any of the alleged conduct and statements of any of the so-called supervisory employees.

C. The Alleged Discriminatory Discharges.

The Board found that the Boswell Company discriminated with respect to the hire and tenure of employment of Elgin Ely, Spear, Martin, Farr, Wingo, Andrade and Powell, and ordered them reinstated with back pay (R. 618). However the Board, contrary to the finding of the Trial Examiner, found that the Boswell Company did not discriminate with respect to the hire and tenure of employment of Gilmore, Boyd Ely, Winslow, Johnston, Griffin or Eugene Clark Ely, (R. 608), and dismissed the amended complaint insofar as it alleged discrimination with respect to them, (R. 622). Notwithstanding the fact that the Board found that there was no discrimination and dismissed the discriminatory charges as to this last named group of men, it ordered the Boswell Company to place their names upon a preferential list of its employees who are temporarily laid off following a system of seniority to such extent as theretofore had been applied in the conduct of its business, and offer them employment in their former or substantially equivalent positions if such employment becomes available and before hiring persons for such work, (R. 619).

The evidence shows that the operations of respondent Boswell Company were highly seasonal and that its employees were, to a large extent, seasonal

employees. There was no evidence whatever that the Boswell Company followed or had any system of seniority with respect to any of its employees. It hired them as its operations required more men, and it laid them off when its operations declined. Contrary to the findings of the Board, there was no evidence showing that the Company still regarded men as its employees when they were laid off or that the men had any such understanding. On the contrary the evidence showed that a lay-off was considered as a termination of employment.

The evidence showed that it was not the custom or practice to hold positions open for former employees who had previously been laid off for lack of work, but, on the contrary, the applicant who was qualified to perform the work when work was available was employed at the time of making application. There were a few instances, however, when Gordon Hammond got in touch with former employees, either personally or through messenger, and offered work to them.

The evidence also showed that when employees were laid off because of the lack of further work it was the custom and practice for the employees so laid off to seek and, if possible, obtain other employment, and there was no understanding or agreement of any sort that any employee so laid off should remain unemployed and wait until the Company later had employment available for him. Neither was there any understanding or agreement of any kind that after an employee was so laid off that the Company should

have first, or any, call on his future services. It is clear from the evidence that whenever an employee was laid off his employment absolutely terminated, and there was no obligation, either on the part of the Company to later re-employ him, or on the part of such former employee to subsequently accept employment by the Company.

The above is illustrated by the following which are a few examples from the record:

James W. Gilmore left his employment with the Boswell Company in July of 1930 and did not return until September, 1931. During that time he worked for other employers, including work at San Jose in a cold storage plant, work in fish canneries in Monterey and work upon the highway, (R. 1832, 1848, 1849).

R. K. Martin testified that he quit working for the Boswell Company on April 1, 1931, at which time he went back to Georgia and he did not return to work for the Company until August 4, 1934 (R. 1202). In September, 1937, Martin quit working for the Boswell Company and went to work for another employer. He didn't return to work at the Boswell plant until March, 1938 (R. 1206, 1226, 1227, 1254). After the mill closed down in the summer of 1938 and Martin was laid off he asked Gordon Hammond to notify him when the superintendent of the oil mill with another firm in Kingsburg wanted him to work (R. 1229).

L. A. Spear in the spring of 1933 was laid

off and he didn't return to work for the Boswell plant for eighteen months (R. 1491).

Steve J. Griffin ceased work for the Boswell Company in May, 1936, at which time he bought a hay baler and didn't return to the employ of the Company for three seasons (R. 1859).

Boyd Ely quit working for the Boswell Company in the latter part of May, 1937, and took a job in the grain harvest for 60 or 70 days, after which he applied to Gordon Hammond for work again and was put to work in September, 1937 (R. 1745, 1746, 1760, 1761). He testified that he left the employee of the Company in May, 1938, that he worked in the harvest that year and that he returned about July, 1938 (R. 1746).

H. N. Wingo was laid off in April, 1938, after which he secured a job with Tulare Land Company and worked for that company from April until June 9, 1938 (R. 1613, 1614).

Farr quit working for the Company in July, 1937, and went to work for the San Joaquin Cotton Company in Bakersfield where he worked for four months. He returned and again secured work at the Boswell Company on November 15, 1937 (R. 983).

All of the above are examples of men complaining in this case and illustrate the fact that Boswell Company employees did not consider themselves and were not considered by the Company as employees when they were not performing work for the Company.

The seasonal nature of the business of the Bos-

well Company and the great fluctuation of employment, all as shown by the undisputed evidence, precluded the Company from keeping any men who might be considered as regular employees. The decrease from a peak employment of 189 plant employees in the 1937-1938 season to a peak employment of 86 in the 1938-1939 season manifestly made it impossible for the Boswell Company to re-employ all former employees during this last mentioned season.

The evidence discloses the following facts with regard to the seven men who were ordered reinstated and the seven men who were ordered placed on a preferential hiring list:

(a) **L. E. (Elgin) Ely.**

The employment record of L. E. Ely is fully set forth in Exception No. 61, page 95, of Exceptions to the Intermediate Report (R. 260). The evidence shows that after he was first employed in September or October 1936, he was laid off frequently and worked only during the seasonal operations of the Boswell Company. During 1938 he was laid off on March 9th. He was re-employed in the lint room of the oil mill for two weeks in May, after which he was laid off and he was again re-employed in July and worked until the early part of August. He was again employed on October 24, 1938 when the oil mill started. He worked until November 16th, at which time he ceased working because of an injured thumb. He **never applied for work after that date** (R. 1790).

On November 28, 1938 he was still absent from

the plant with his injury, and the gin upon which he was working had shut down on November 26, 1938. Since he was not at the plant a registered letter was sent to him (R. 2862; Board's Exhibit No. 9), informing him of the fact that the job on which he had been working was completed and that his employment was terminated. There is no contradiction in the evidence that the job on which he had been working did actually end on November 26th, and this was in full accord with his employment and lay-offs in prior years, since his employment had been merely the performance of seasonal work and odd jobs.

He testified that he joined the Union on November 11, 1938 (R. 1784), but there was no evidence which showed or tended to show, that the management of the Boswell Company ever had any knowledge of his Union affiliations. There was no showing that the Boswell Company ever had work available for him after November 26, 1938.

It affirmatively appears from the record that L. E. Ely testified that he was not willing to accept re-employment by respondent Boswell Company at the same hours and pay received by him during the time he was employed by the Company (R. 1797-1799). His testimony in this respect was as follows:

"Q. (By Mr. Mouritsen) If the National Labor Relations Board should order your reinstatement with back pay, would you accept employment with the J. G. Boswell Company?

A. (Pause) Yes.

Mr. Mouritsen: You may inquire.

Cross Examination

Q. (By Mr. Clark) Mr. Ely, you hesitated on that last question. Have you any reservation you wish to make to that answer? You understand what I mean?

A. Yes, I understand.

Q. Well, have you any, any qualification to that answer?

A. Well, I really wouldn't like to work at 12 hours a day again.

Q. You would not.

Now, what other conditions in the plant there as they existed at the time you worked at the Boswell Company would stand in the way of your accepting employment from that Company should the Board order your reinstatement?

Do you understand the question?

May I have it read, Mr. Examiner?

Trial Examiner Lindsay: Yes.

The Witness: Well I would like to get more money for my work.

Q. (By Mr. Clark) More money than the 35 cents an hour you were getting? A. Yes.

Q. Or the 40 cents an hour you were getting?

A. Either one.

Q. What?

A. Either one.

Q. More than the 40 cents too?

A. Yes.

.

Q. (By Mr. Clark) Well, you weren't satisfied

with your employment, Mr. Ely, then prior to November 14th, upon which date I think you told us you finally left the company?

.

The Witness: No."

Under these circumstances, the Board's order that Ely be reinstated with back pay would not be justified, in any event.

Cupples Co., Manufacturers v. N. L. R. B., supra.

In the above case the court stated at page 118:

"Surely an employer cannot be compelled to reinstate or pay persons unwilling to work for him."

(b) **George J. Andrade, O. L. Farr,
R. K. Martin, L. A. Spear,
H. N. Wingo and E. C. Powell.**

All of the foregoing men left respondent's plant on November 18, 1938.

The employment records of Andrade, Wingo and Spear are set forth in exception No. 97, page 188, of Exceptions to the Intermediate Report. (R. 367 to 373).

Farr's employment record is set forth in Exception No. 56, page 78, of Exceptions to the Intermediate Report (R. 240 to 250).

Martin's employment record is set forth in Exception No. 57, page 86, of Exceptions to the Intermediate Report (R. 250 to 255, inc.).

Powell's employment record is set forth in Exception No. 89, page 171 of Exceptions to the Intermediate Report (R. 349 to 355).

The evidence shows that all of the above men-

tioned men were seasonal employees. They worked only during the seasonal operations carried on by the respondent Boswell Company.

Martin worked for the company in 1930 but left in 1931 and did not apply for work again until 1934. He worked off and on during seasonal operations from 1934 to September, 1937, when he quit his employment and took a job with another firm until March, 1938. He was then employed by the Boswell Company and worked for two weeks when he was laid off. He went to Colorado and did not return until May 17, 1938. He was given a job at that time in the oil mill repairing machinery until the mill started, when he worked in the mill.

He joined the Union on September 2, 1938 (R. 1207). After September 2nd he took an active part in Union organization and the solicitation of members. He talked with numerous employees regarding joining the Union (R. 1230). He attended various Union meetings and took prospective members with him, and he talked about the Union with a lot of the employees, (R. 1231).

When the mill closed on September 27, 1938, Martin was laid off (R. 1229). Gordon Hammond testified that Martin told him he expected a job at Kingsburg with another company and asked Gordon Hammond to let him know when the superintendent called (R. 3013). This testimony was substantially confirmed by Martin (R. 1228, 1229).

On October 8, 1938, Prior as Union representative, had a conference with Gordon Hammond for

the purpose of discussing the re-employment of Martin and certain others (R. 3012-3014; 831-833).

Sometime in October, 1938, which date was fixed by Spear as between the 5th and 10th of October, Martin, Farr and Spear, acting as a **Union Committee**, called upon Gordon Hammond to discuss hours and working conditions (R. 1518-1520; 1532-1533).

After all of the foregoing, Martin was re-employed by the Boswell Company on October 10th, at which time his pay was raised from 40c to 50c per hour (R. 1228, 1229, 1204-1206), and he was given steady employment from that date until he left the Boswell plant on November 18, 1938 (R. 1229). He was carried on the payroll at the Boswell Company until November 26th, at which time the gin on which he had been working before he left (Gin No. 4) shut down and the job ended (R. 1232, 3005; 1244, 1245). His pay was continued until November 26th, even though he did no work for the company after November 18, 1938.

Martin never applied for work at the Boswell plant after November 18, 1938 (R. 3079; 1244).

Farr was first employed by the company at the commencement of the ginning season in 1936. He worked with occasional lay-offs until July 19, 1937, when he quit and went to work for the San Joaquin Cotton Oil Company at Bakersfield. He remained there for about four months, receiving the same pay and working the same hours as he had received and worked at the Boswell Company (R. 983, 984; 1025, 1026). He was re-employed by the Boswell Company

on November 15, 1937, and worked off and on until September 28, 1938. At that time he went to Oklahoma where he stayed until October 15th, 1938, (R. 984, 1041).

On September 2, 1938 he joined the Union, after which time he talked about the Union to other employees and invited them to meetings.

On October 8, 1938, Prior, as Union representative, had a conference with Gordon Hammond regarding the re-employment of Farr, as well as certain other Union men. After this conference, Farr was re-employed by the Company on October 15th, and worked until he left the plant on November 18th (R. 1041). He was carried on the payroll to and including December 3, 1938, at which time the gin on which he had been working before he left (Gin No. 2) closed and the job ended (R. 2872; 3004). His pay was continued until December 3rd even though he did no work after November 18th.

The evidence is undisputed that he **never applied for work at the Boswell plant after November 18th, 1938.** (R. 3079).

The Board failed to sustain its burden of proving that Farr has not secured other regular and substantially equivalent employment since he left the Boswell plant on November 18, 1938. It affirmatively appears from the record, by the testimony of Frank A. Mouritsen, attorney for the Board, that he permitted Farr to leave the hearing to accept employment elsewhere (R. 2798, 2799).

Andrade worked primarily when the gins or the mill operated. The record shows that he worked until

the mill closed in March, 1938; that he commenced work again when the mill opened May 3, 1938, and was laid off when it closed again May 17, 1938; that he went to work again when the mill opened July 1, 1938, and was laid off when the mill closed on September 27, 1938.

Andrade joined the Union September 2, 1938, (R. 1702). He was one of the Union men discussed by Prior in his conference with Gordon Hammond on October 8th. Shortly after this conference Andrade was re-employed as clean-up man in the gins. He testified that his work as clean-up man in October didn't take all of his time and he helped at various types of work whenever there was anything to be done. He left the plant on November 18, 1938 and received his pay until November 26, 1938, at which time his job was completed although he did no work after November 18th.

The evidence is uncontradicted that he **never applied for work at the Boswell plant after November 18, 1938** (R. 1713, 3079).

Wingo also worked at seasonal operations and was laid off in the week ending March 24, 1938 for a few days. He then got a job with the Tulare Land Company and worked at that job until June 9, 1938. He was re-employed by the Boswell Company about the 1st of July, 1938, and worked until the mill closed down in September 1938, when he was laid off.

Wingo made application for Union membership on September 2, 1938. Shortly after his lay-off in Sep-

tember he was re-employed and worked until he left the plant on November 18th, 1938.

He received his pay until December 3, 1938, at which time the gin on which he had been working closed. The evidence shows that he **never applied for work after November 18th (R. 1644).**

Spear was first employed in July, 1928. He testified to various lay-offs from time to time, and that in the spring of 1933 he left the Boswell plant and stayed away for eighteen months. He was re-employed by the Company in September, 1934, and was laid off from time to time after that. In February, 1938, he was laid off for two or three months until May or June, when he was again re-employed. He testified that as early as October 10, 1938, he realized the work was running short and that he had been told by Gordon Hammond that there was not enough work for the men employed unless the mill started. He also testified that the cotton crop in the 1938-1939 season was very short and that the work at the gins was running out about November 18th, 1938. (R. 1567).

Spear applied for Union membership on September 2nd, 1938 and was elected president of the Union. He said he let his membership be known around the plant (R. 1576, 1577). Spear, Farr and Martin, as a Union committee, had a conference with Gordon Hammond early in October. Spear testified that Gordon Hammond had told him long before that conference that the men were free to join any union. He continued to work until he left the plant on November 18th, 1938, and Prior testified that even on November 28th

Louis Robinson said that they had some work for Spear.

Spear received his pay until December 5, 1938, at which time the gin on which he had been working closed down. The evidence shows that **Spear did not apply for work after November 18th, 1938.** (R. 3080).

Powell did not work at the Boswell plant from about the first of 1938 until July 3, 1938. During a portion of that time he was in jail after having been convicted of a felony. His last job for the company was in the warehouse replacing an injured employee who usually worked there. (R. 2864).

Powell testified that he did not leave the plant on November 18th with the other men. He stated that he was put to work on the jobs of several of the Union men who had left, but he didn't want to do their work and so he left shortly afterward. As hereinafter shown, Powell's testimony was so thoroughly discredited that it is of little, if any, value.

It is stated in the Board's purported Decision and Order (R. 499, 530) that "Upon ascertaining that that was Winslow's job (referring to the events of November 18, 1938) Powell again declined to perform the work on the ground that he would be "scabbing". In the Board's brief it is stated that Powell declined an assignment to operate machines left vacant by the other Federal members on the ground that he would be "scabbing on the Union." (Brief p. 17). This reference to "scabbing on the Union" is directly contrary to the evidence. Powell testified in response to a question by Mr. Mouritsen that "I told Tommy Hammond

that I couldn't take that job, that was a Union boy's, and I would be scabbing on the Union." (R. 1284). However, upon objection of respondents' counsel the last portion of said answer was stricken from the record (R. 1286).

Powell never applied for work after he left the plant on November 18th, 1938. (R. 1296). His pay was continued until November 28th when he was notified that the injured man whom he had replaced had recovered (R. 2864).

(c) James W. Gilmore.

The employment record of Gilmore is set forth in some detail in Exception No.55, page 68 of Exceptions to Intermediate Report (R. 229). The evidence showed that although he worked for respondent Boswell Company off and on over a considerable period of time, he worked entirely in the performance of seasonal work in connection with the normal seasonal operations of the Company. He was frequently laid off and in 1930 left the employment of the Boswell Company and worked elsewhere for a period of about fifteen months. He testified that since 1936 he worked in the seed house of the mill and was laid off at times but when the mill was not running he would sometimes do odd jobs, such as painting and cutting weeds. He was laid off on March 19, 1938, for several weeks after the oil mill closed. He was re-employed on May 2, 1938, the day before the oil mill opened, and he was again laid off on May 17, 1938, when the mill closed (R. 791; 3069).

He testified **that after his lay-off on May 17th, 1938 he never thereafter at any time applied for work from**

the Boswell Company again (R. 1854, 3078).

(d) **Boyd Ely and Walter Winslow.**

Winslow's employment record is set forth in some detail in Exception No. 62, page 102 of Exceptions to Intermediate Report (R. 267). He testified that he worked off and on for the Company and did odd jobs and a little bit of everything around the Boswell plant. He was laid off in March, 1938, when the mill shut down, for about a month. He then went back to work chopping weeds, but worked only part-time, probably a week on and a week off, during the summer of 1938. He was re-employed in September, 1938, when the gins started operating and worked for about two weeks, when he was again laid off. About the time the oil mill started he was re-employed and worked in the mill until November 15, 1938 (R. 1656). At that time the mill was closed down. The evidence shows that Winslow **never applied for work since his lay-off on November 15, 1938** (R. 1689). Winslow also testified that he was not initiated into the Union until **November 16, 1938**, and that he never attended any Union meetings until that date (R. 1686).

Boyd Ely's employment record is set forth in some detail in Exception No. 65, page 105 of Exceptions to Intermediate Report (R. 272). The evidence showed that he first commenced working for the Boswell Company in the summer of 1936, that he quit in the summer of 1937 and took a job in the grain harvest for sixty or seventy days, and that he also quit working for the Boswell Company in the summer of 1938 and work-

ed in the harvest. He was laid off at various times and he was re-employed by the Company about July, 1938, and shortly after that time began working in the mill as he had done previously. He was laid off on September 28, 1938, the day after the mill stopped operations (R. 1758, 1759).

Ely joined the Union on September 5, 1938 (R. 1762). After he was laid off in September, Prior, as a Union representative, held a conference with Gordon Hammond to discuss the re-employment of Boyd Ely and others who had been laid off (R. 3012, 3013). After the conference with Gordon Hammond, Ely was re-employed about October 15, 1938 and at that time his pay was raised from 35c to 45c per hour (R. 1759). He received this increased pay until he was laid off on November 14th. He stated that he was on the night shift at the mill and was laid off on the night of November 14th. **Ely never applied for work since November 15, 1938 (R. 1758).**

The evidence affirmatively showed that Boyd Ely secured other regular and substantially equivalent employment since November 15th, 1938 (R. 1755, 1757).

The Board failed to offer evidence to satisfy its burden of proving that Walter Winslow had not obtained other regular substantially equivalent employment since his employment by the respondent Boswell Company ceased.

(e) Stephen J. Griffin and W. R. Johnston.

Griffin's employment record is set forth in Exception No. 70, page 117 of Exceptions to Intermediate Report (R. 285). The evidence shows that he was em-

ployed in 1932 but that in 1936 he bought a hay baler, after which he did contract work, and he did not again work for the Boswell Company for three seasons. He was again employed by the Boswell Company in the week ending August 5, 1938 and worked two days (R. 2986). He was then laid off and did no further work for the Boswell Company until the week ending October 13, 1938 (R. 2986). He was working on the planting seed. He was laid off on November 17, 1938 (R. 2981-2984). During the last week of his work he was engaged in clean-up work around the yard and hauling planting seed, and he worked from four to eleven hours a day during that week.

Gordon Hammond testified that Griffin was laid off because there was no work for him to do, and this is shown by the nature of work done by him just prior to his lay-off.

The undisputed evidence shows that practically all of the available planting seed had been handled at the time of Griffin's lay-off. Out of 1007 tons of planting seed set aside for the entire year, 879.4 tons had been sacked and stored in the warehouse. Fifty or sixty tons more had been sacked but had not been weighed (R. 3011), and practically all of the planting seed had been sacked and hauled (R. 3076). The evidence also showed that on November 17th, the day upon which Griffin was laid off, the Company had finished picking the cotton set aside for planting seed (R. 3011).

The evidence is undisputed that Griffin has **never applied for work from the Boswell Company since November 17, 1938** (R. 1912, 3078, 3079).

Griffin did not know when he joined the union but thought it was about November 15th or 16th, 1938 (R. 1864).

Johnston's employment record is set forth in Exception No. 71, page 124 of Exceptions to Intermediate Report (R. 294). Johnston was originally employed at the commencement of the ginning season in 1937 (R. 955, 956). Because of an injury in January, 1938, he left work and was not re-employed until about October 24, 1938, when the mill started running (R. 962, 963). He testified that he had recovered from his injury in June, 1938, but that he did not apply for work until October 10th (R. 963). From that time on until the closing of the mill Johnston was merely performing odd jobs (R. 950, 951). He was laid off when the mill closed on November 17th, 1938.

Johnston never applied for work after November 17th, 1938. (R. 963-965).

The evidence showed, as Gordon Hammond testified, that the work was running out at the time of Griffin's and Johnston's lay-offs on November 17th and this was further confirmed by the testimony of Prior relating to the conference between Prior, Farr, Martin, Spear and Gordon Hammond **on that day** at which they discussed the fact that the cotton was running out and the Union representatives suggested that the work be spread among the employees to prevent any more lay-offs than necessary. Prior testified that he knew a number of employees had been laid off and it was understood that there were probably going to be more laid off (R. 1156, 1157).

Furthermore, the Board failed in its burden of proving that Johnston and Griffin had not secured other regular and substantially equivalent employment.

The evidence affirmatively shows that Griffin had secured such employment (R. 1867, 1868).

Although Johnston said he was unemployed, Frank A. Mouritsen, attorney for the Board, was later called as a witness and he testified that Johnston had been called out of order so that he could take employment elsewhere, and that he had let him go for that purpose (R. 2798, 2799).

It also affirmatively appears from the record that Johnston's leg was operated upon in February, 1939, as a result of his previous injury, and that from February, 1939, to and including the time of the hearing in this proceeding, Johnston was incapacitated as a result of the operation and unable to do any type of work. During this time he received, and was receiving at the time of the hearing, workmen's compensation payments, as provided by law.

(f) **Eugene Clark Ely.**

The employment record of E. C. Ely is set forth in Exception No. 93, page 182 of Exceptions to the Intermediate Report (R. 360).

Ely, who was first employed in September, 1937, testified that he laid off at his own request on January 29, 1939, and when he returned to the plant on January 30th, 1939, he was told there was no work to do, but there might be some later on (R. 1922). He said he left the plant a little later and **never applied for work after**

that date (R. 1937).

Gordon Hammond testified that Ely was not laid off, that he told Ely to load cotton, but that he left the plant instead of working (R. 3077).

Ely testified that he applied for membership in the Federal January 2, 1939, and that he was initiated January 19, 1939 (R. 1923).

Ely also testified that he ran around with Union men during the fall of 1938, that he lived with Johnston and L. E. Ely during that time, that Gordon Hammond had been to the house where the three of them lived, and that he worked steadily from October, 1938 during all of that time until January 30th, 1939 (R. 1934, 1935, 1938).

The Board found that Ely was not laid off because of his Federal membership, but on the contrary left his job voluntarily (R. 568).

As shown by the foregoing, it was the usual practice of the Boswell Company to lay off the men above mentioned when the need for them no longer existed. It was common and customary for them to be laid off when the gins or mills shut down unless there was some other work around the plant for which they could be used, and there was no showing or evidence in this case that there was any other work available after the time the employment of each of them ceased.

The evidence, and particularly the uncontradicted evidence respecting the seasonal nature and extent of the operations of respondent Boswell Company and its customary practice of substantially reducing the number of employees at the end of each ginning season,

shows conclusively that the Company did not discriminate with respect to any of these fourteen men. For instance, the undisputed and stipulated evidence shows that the peak of the employment season each year is between October 15th and November 15th, and that the number of employees decreased in the later part of the season (R. 2998, 3000); that the number of employees, exclusive of office help, for the week ending October 27, 1938, was 86; that for the week ending November 17, 1938, the number was 84, and that this was approximately the peak of employment that year (R. 3000); and that by April 22, 1939, the number of plant employees had dropped to only 55 (R. 3012). Consequently it appears that 31 men, including the 14 Federal members in question, were necessarily laid off subsequent to October 27, 1938.

So far as disclosed by the evidence the 31 men so laid off included only the 14 members of the Federal whom the Board ordered reinstated or placed on a preferred list. Manifestly it would be unfair to the other 17 men who were laid off, and it would be contrary to the intent and purpose of the Act, to reinstate or give employment preference to the members of the Federal without equal consideration being given the other 17 men. For this reason the Board's order fails to effectuate the purpose of the Act and is punitive in its nature and is contrary to law, particularly so far as it relates to the placing of 7 of the Federal members on a preferential hiring list.

In **N.L.R.B. v. SUPERIOR TANNING CO.**, 117 Fed. (2d) 881, (C.C.A. 7, 1940), the court refused to en-

force that part of the Board's order which directed the respondent company to place on a preferential hiring list 5 union members whose discharge was not found to be discriminatory, stating at page 891:

"In view of respondent's conduct in this case the Board felt it 'possible that the respondent will not reemploy these five men, even if their former positions or substantially equivalent positions become available.' Accordingly the Board ordered the five men placed on a preferential list to be offered employment as it arises . . . We are convinced the action of the Board in this respect was neither necessary nor proper. We perceive no difference once the above allegations of the complaint are dismissed, between these five named employees and the many more who the record shows were also laid off during the same period. We appreciate the reasons assigned by the Board for the requirement in question but we think that the Board has gone beyond its statutory authority. Under the circumstances the exercise of such a power takes on a punitive character not contemplated by the act."

In **F. W. WOOLWORTH CO. v. N.L.R.B.**, 121 Fed. (2d) 658 (C.C.A. 2) it appears that the respondent company reduced its staff and laid off a number of employees, both union and non-union. The Board found that part of the union employees were discriminatorily discharged, but some of them were not, and directed that those who were discriminated against be reinstated and those who were not discriminated against be placed on a preferential hiring list. However, the Board in making its order with respect to the men who were to be placed on a preference list did not take into consideration the relative proportion of union

and non-union employees at the time of the lay-off. The court therefore held that the portion of the order relating to the preference list was erroneous, and modified the order to provide that the Company should be required to select from the preferred list only in the old proportion of union men to non-union. The court in its opinion stated at page 6~~7~~²:

"The Board ordered that all who are not thus reinstated should be placed on a preference list to be offered employment as it becomes available. This, we think, was erroneous; in order to avoid the improper assumption that all new employees would be union men the petitioner should have been required to select men from the preference list only in the old proportion of union men, i.e., seven men out of ten should come from that list."

It is clear that the Board arrived at an erroneous conclusion with respect to all of the 14 Federal members and one which is contrary to law, particularly in the case of Elgin (L.E.) Ely and his brother Eugene Clark Ely.

As previously pointed out, Elgin Ely ceased working November 16, 1938 because of an injury, and did not thereafter apply to the Company for work at any time, notwithstanding the recovery from his injury about December 2, 1938. (R. 1795). The only possible basis for the Board's finding and conclusion that he was discriminated against was the letter which the Company sent him on November 28, 1938, after the gin at which he had previously worked was shut down for the season. Moreover, there was no evidence that the Company at the time of sending him such letter even knew of his Federal membership, and the Company

was fully justified in sending this letter, as he was not present at the plant working so as to be personally notified of the work shortage. Obviously the Board based its finding of discrimination merely upon the weakest kind of inference erroneously implied by the Board from the sending of this letter. Moreover, Elgin Ely, as heretofore pointed out, testified that he was unwilling to accept re-employment by the Company.

In the case of Eugene Clark Ely the undisputed evidence shows, and the Board so found, that he voluntarily quit his job on January 30, 1939, notwithstanding he was offered further work at that time. When he voluntarily severed the employer-employee relationship without any act of discrimination on the part of the Boswell Company, he thereby placed himself beyond the pale of the Act.

D. THE ALLEGED EVICTIONS

The evidence shows conclusively that the episode of November 18th, 1938, was solely a dispute between the non-union and union men.

The general antipathy of a great majority of the employees toward Prior's union or any other outside union first became apparent at the organizational meeting held by Prior in the American Legion Hall in Corcoran on July 13, 1938. He had previously sent invitations for the meeting to some thirty of the Boswell Company's employees whose names were on a list given him by Farr (R. 819), who in turn had obtained the list from Gilmore (R. 1048). Only six or eight men attended the meeting, including Gilmore and Weatherby who

were not then employed by the Boswell Company (R. 820). After Prior explained the purpose of the meeting, he was informed by an employee named Gonders "that the employees of the Boswell Company were one happy family . . . and that they really wanted no organization in the plant."

When it became apparent from the results of this meeting that the employees were not interested in his organization, Prior without having talked to anyone at all connected with the management of the company filed an 8 (1) charge with the National Labor Relations Board on July 17, 1938. He testified this was his next organizational activity. (R. 824). This charge was apparently based solely upon statements made to him by Gilmore and Weatherby. The charge was never served and was later withdrawn at the instance of Mr. Larson, an agent for the Board, as heretofore mentioned.

The evidence shows that the Union men wore their Union buttons to work for the first time on the morning of November 18, 1938, and that Gordon Hammond was not present at the plant between the hours of 8:30 A. M. and 7:00 P. M. of that day. The evidence further shows that the Union committee had held a conference with Gordon Hammond on November 17th, at which time they suggested a reduction in the working hours. The working hours were reduced in accordance with their suggestion.

When the employees held their gathering in the yard on the morning of November 18th, Spear testified that he started to tell the other men about the 8-hour plan which was being put into effect. It should be

borne in mind that a reduction of the working hours of any of the men likewise reduced their earnings since they were paid upon an hourly basis. Such a plan also would have caused some of the older employees to work less time and make less money so that some of the newer employees could share their earnings.

There is no evidence that the members of the Federal in anywise protested against or objected to attending the gathering in the plant yard on the morning of November 18th. On the contrary it is clear that they welcomed the opportunity of meeting with the rest of the employees and explaining the objects and advantages of the Union, and particularly what the Union committee had accomplished in the matter of reducing the working hours at its meeting with Gordon Hammond on the previous day.

The Board found there was no evidence to indicate that the non-union employees were actually resentful of the Federal's action in requesting a reduction of work hours (R. 531, 532), and that Bill Robinson and Kelly Hammond, two of the alleged supervisory employees, were the active leaders of the disturbance and the principal molesters of the Federal members (R. 532). The evidence shows, however, that such was not the case.

Martin in giving his version of the incidents of that morning testified that as he went out the door of the gin where he was working, he met Bill Robinson and they had the following conversation:

"He (referring to Bill Robinson) says, Martin, we are going to have a little meeting out here to see

whether we are going to have this union or not. We want everybody to go out there and talk things over."

He said, "Now, Martin," he said, "Whatever you do, don't go out there and raise no racket.

I says, "O. K.," but I says, "I won't go out there and have some of those guys tell me to my face what I have heard to my back."

He said, "What is that?"

I said, "Talk has been going around that the Union was all right, not these God damned low down leaders."

I says, "I won't stand for that to my face."

He said, "I don't blame you." He said, "You got a right to your belief just the same as they have to theirs," and he said, "If you believe in the A. F. of L. Union that is O. K. I don't blame you for that."

I started on. He said, "Martin, whatever you do, don't raise no racket."

I said, "O. K."

(R. 1210, 1211).

Martin testified that he went to where the bunch of men were gathered between the two gins. He walked up to take part in the meeting and they began, wanted someone to start the conversation. Finally Jack Ely started the conversation. Jack Ely was a brother of the other Ely boys who either were at that time or later became members of the Federal, and he did not belong to the Federal. (R. 1937). Jack Ely, according to Martin's testimony, walked up to Farr and

said "Farr, we want to know about this union." Farr replied, "well, I don't know what you want to know about it." Ely said, "we want to know what there is to it." Farr replied that they didn't discuss their business outside of the meeting, and then somebody said "where is the president?" "Who is the president?" Farr said Mr. Spear was their president and somebody said "Bring him in." Spear then got up and walked over and said "Boys, what is it you want to know." Then Bill Nichols, one of the carpenters, said they wanted to know about Spear's union. (R. 1212). Spear said they were trying to help everybody—weren't working against anybody and were trying to keep everybody at work possible. Then Mr. Brown one of the engineers spoke up and said "throw them out." (R. 1215). Then three employees, namely, Tisdale, Sailsbury and John Duncan took hold of Spear and started out with him and marched him out the gate and over to Gordon Hammond's office (R. 1216, 1217).

Wingo, who also attended the gathering in the yard, testified that it was decided at a union meeting held around November 16, 1938 (R. 1618, 1619) that the union members would wear their union buttons at the plant and that they first wore their buttons at the plant on November 18th (R. 1620). He further testified that Mr. Brown, the day engineer, was one of the men who said "Let's throw them out" (R. 1624, 1625).

Farr testified that he worked until about ten o'clock on the morning of November 18th, when he walked over to the meeting. He testified that after he got there Jack Ely walked up to him and said "I want

to know about your damn union" (R. 996). Farr replied that it was not a union meeting and they did not discuss union activities on the job. Then some one in the crowd asked who was the president of the union, and when Farr told him Mr. Spear was, the crowd gathered around Spear. (R. 998, 999). Spear said that the union was only trying to make the working conditions for everybody better; that the talk had been of some lay-off and that they wanted shorter hours for that reason, that everybody should work and get their share of the work. Then some one in the crowd cried "let us throw them out. The Company is behind us." (R. 1000). However, Farr did not recognize anyone who made this remark. Three employees of the Company, namely Duncan, Tisdale and Sailsbury then took hold of Spear and pushed him towards the office (R. 1001). Farr admitted upon cross-examination that when Jack Ely told him they wanted to know about the union and asked why they wanted to turn against the Company, Farr did not tell him Gordon Hammond had previously told him, Farr, that the employees had a right to do as they wanted so far as joining a union was concerned (R. 1044).

Farr also testified that when he returned to the plant after having gone to Gordon Hammond's office he met a man by the name of Derischweiler and his son, both of whom were gin employees (R. 1007, 1008), and these two men remarked that he was one of the union men and threatened to throw him out.

Andrade worked about four hours on the morning of November 18th before attending the gathering in

the yard. (R. 1705). His version of what occurred at the meeting was substantially as follows:

Somebody wanted to know what about the union and Jack Ely asked for the president (R. 1706). Farr said Spear was the president and the crowd gathered around Spear and somebody asked "What about the Union." Spear tried to answer, but somebody in the crowd hollered "Let's throw them out." Then three men grabbed Spear and went over to the office building.

Spear, who also attended the gathering on the morning of November 18th, testified this was the first time the Union men wore their Union buttons to the plant (R. 1494). He arrived at the plant a few minutes before ten o'clock to do some preliminary work before his gin started. Mr. Todd, the engineer, said he had been told not to start the engine as there was going to be a meeting. Spear then went to the gathering place (R. 1497, 1498). He saw some of the men talking with Farr (R. 1500) and something was mentioned about the president, and Farr said Spear was the president, so Spear walked up toward the bunch that was on the front end of the bale wagon. (R. 1501). Nichols asked what about the Union business (R. 1502). Spear started to explain to Nichols about the 8-hour plan that was being put into effect to save No. 4 gin from being laid off. (R. 1503). While explaining the matter Tisdale and Sailsbury took hold of him and they went over to Gordon Hammond's office (R. 1504).

District Attorney Roger R. Walch testified that on November 18, 1938 a group of four or five men came

to see him at his office in Hanford and said they were Boswell Company employees. They informed him that there had been a little misunderstanding that had arisen at the Boswell plant that morning (R. 903). He did not know these men personally and could not recall their names. They asked him what he knew about the Wagner Act and the possibility of the local employees forming an employees union at the Boswell plant. (R. 903, 904). They informed him they represented practically the unanimous feeling of the employees of the Boswell Company; that they didn't feel as though they desired to have an outside union come in; that there had been talk of the American Federation of Labor coming into the plant and they felt they would rather have their own bargaining agency. They stated there was some dissension and that seven or eight men at the plant had been talking up an American Federation of Labor Union affiliate. (R. 904, 905). They asked if he would represent them in organizing a union, and he informed them that as District Attorney he could not handle such matters (R. 905). He mentioned two local unions of employees which had recently been organized in the county, and suggested that they consult Attorney Clark Lament (Clement) from Lemoore if they were thinking of forming their own union (R. 905, 906).

Mr. Walch testified that he asked these men if the Boswell Company management had anything to do with the matter, and they assured him it did not and that the management did not even know they were coming up to consult with him and that they (this committee) were expressing the sentiment of the employees.

He asked them why they wanted their own and not an outside union, and they said they did not feel like paying tribute to an outside organization, that Boswell's had always treated them right and their wages were satisfactory, and they felt that inside of their own organization they could do better than having an outside bargaining power (R. 906).

Mr. Walch also testified that he discussed with them the trouble which had occurred at the plant that morning, and they told him that one or two men had been talking up the American Federation of Labor affiliate, and that they had gotten tired of the talk and didn't want to be bothered with them, and they had asked them to leave the premises. However no force of any consequence had been used. Mr. Walch then asked them if they had ejected the Union men from the premises on the authority of the Boswell people, and they said "No; Boswell hadn't done anything about it until it was all over." Mr. Walch then instructed them that they had no power or authority to eject anyone from anyone else's property and cautioned them against any repetition of the act (R. 907, 908).

The fact that the alleged eviction of certain of the members of the Federal was the result of resentment on the part of the non-union employees is also demonstrated by the letter written by Mr. Louis T. Robinson to the Los Angeles office of Boswell Company on November 18th shortly following the occurrence of the trouble at the plant. This letter was written while the trouble was fresh and read in part as follows:

"The following is a chronological account of

the labor trouble at our plant this morning:

For some time a Mr. Pryor representing himself as an organizer for the Vegetable Oil Workers' Union of Long Beach has been endeavoring to organize a local chapter of this union in our plant. He and his followers were never able to get enough members to form the union and after working several months they began to "put the heat on" our employees in an effort to force in more members. This was done by offering to accept membership without charge and by threatening to "Roll" the employees for their jobs if they did not join the union. The threat was made that soon the ginning season would be over and the non-union men fired and the union men retained in the jobs.

This morning at ten o'clock on their own volition, the employees, both union and non-union, agreed to have a meeting to discuss the matter. The three tentative officers of the local proposed chapter were at the meeting. According to the best information I could get, the meeting practically amounted to nothing but that the non-union men decided that the three tentative officers were making unnecessary disturbance and endangering their jobs. They therefore took the three union men and bodily threw them off the property. The employees then came to see me in a body and demanded that I fire the union men. They were pretty well worked up and I endeavored to calm them down and persuaded them to go back to work, both Union and non-union. They did go back to work but the non-union men evidently kept a little pressure on the union men and in a few minutes the union men left their jobs.

The non-union men then appointed a committee and the committee went to the District Attorney for instructions as to the best method of procedure for them to follow. It is my understanding the District Attorney advised them that up to date they were in the clear and suggested that they think the matter over carefully and determine on

the best possible method of handling the matter and that in the meantime, he would give the problem thought and continue to advise them." (R. 2601).

Mr. Louis T. Robinson testified that Gordon Hammond was not present at the plant on November 18, 1938 when the disturbance between the employees occurred, and when he saw Gordon Hammond on the morning of November 19th, he requested Mr. Hammond to make an investigation of the events of the previous day and to make a written report to him concerning the same. In response to this request Gordon Hammond on the same day, to wit, November 19th, made a written report which was introduced in evidence as Board's exhibit No. 25 (R. 2604; R. 2892-2894). Said report read as follows:

"November 19, 1938

Memo to: Mr. L. T. Robinson

From: Mr. G. L. Hammond

I have made quite a lot of inquiries into the trouble the employees had yesterday while I was away. There seems to have been a misunderstanding between some of the employees as to who would supervise the work and working hours at the plant, myself or the employees that had affiliated themselves with the A.F.L. Union.

It is my understanding that they had decided to get together at 10 o'clock when L. A. Spear came to work and see what it was all about, as he was President of the local Union. In trying to determine why and what the cause of the trouble was and of the rushing of L. A. Spear out of the gate and into the office, my understanding is that O. L. Farr, R. K. Martin and some of the others that possibly had joined the Union were passing the word along that they were giving them their last

chance to get in the union or they would lose their jobs, but were passing the buck to L. A. Spear and he wasn't there yet. That seems to be the reason of their closing down the gin after 10 o'clock.

I find that Lonnie Spear did get on the bale wagon and tell then that they were going to prorate the work and work eight hours only, and if they wanted to work here they would have to join their Union.

Then W. C. Nichols got up some place where he could ask Spear outright if he understood him to say that they were taking charge of all the work and Spear answered yes. Then Nichols asked Spear if he meant that for the boys to work here they would have to join the Union, and Lonnie answered that he meant that very thing.

Then someone in the crowd said 'Let's throw him out', and they proceeded to rush him out of the gate and into the office.

I am sure this would never have happened if I had been here, because everything was ok when I left about 8:30. I am very positive nothing like that would ever have happened anyway if Lonnie hadn't told them they were going to prorate the work and working hours and that they would have to join the Union to work here.

I think they should have continued to operate and let me handle the problem when they knew that I would be back that evening.

G. L. Hammond"

Gordon Hammond's investigation and report was made while the matter was still fresh in everyone's mind and under the circumstances not intended to be self-serving. Undoubtedly his report reflects the true facts and situation, and certainly is more credible and dependable than the testimony of the various Board witnesses given months later at the time of the hearing. His report shows the entire background of the matter

and demonstrates conclusively that the difficulty arose between the two groups or factions of men, solely as the result of a feeling on the part of the non-union employees that they did not want any outside union coming into the plant, and did not desire spreading of the work with less earnings to each individual, and did not desire to pay tribute to Prior's union.

There is no credible evidence that shows, or tends to show, that the meeting of the men on the morning of November 18th was known by either Gordon Hammond or Louis Robinson. The evidence affirmatively shows that no authorization was requested by, or given to, anyone to shut down the gins for the purpose of a meeting. The first knowledge that any official of the Company had of this occurrence was when the men came into the office and some of them demanded the discharge of the Union men. At that time Louis Robinson instructed them all, both Union and non-union, to go back to work and that he would be around later to straighten it out. The men followed his instructions, but, according to the hearsay testimony of the complaining Union men, the non-union men, without ever consulting Louis Robinson, left the plant of their own free will.

That the Federal members were in no sense of the word evicted is clearly shown by their own testimony. Martin testified that after the men returned to their jobs after having been instructed by Louis Robinson so to do, Bill Robinson asked Martin what he was going to do, stating it seemed like either all the union men or the non-union men would run the plant.

Martin replied that if Mr. Hammond or Mr. Louis Robinson came down there and said "go home" all right, but until they did they would not. (R. 1222). The Union men stood around for a while. Bill Robinson asked what they were going to do. Andrade asked where Spear was. They went to the gin where Spear was and told him it seemed as though the boys weren't going to work with him. Spear said if that was the way the boys felt about it they would go home. Bill Robinson said it looked like the thing to do was to get it straightened out. (R. 1223). After conferring with Spear the men then went home after 15 or 20 minutes without going back to see Mr. Louis Robinson before they left the plant (R. 1241, 1242).

Powell, who also attended the gathering in the yard on the morning of November 18th, testified that he did not go to the office with the rest of the men and that the men returned from the office in about 10 minutes. (R. 1280, 1281). After the men returned from the office they said the employees weren't going to work for the Union men and that they left again. (R. 1282). Bill Robinson came along and told Powell to take No. 4 press, but he refused to take that job because he found it was Joe Briley's job, who was a member of the Union. (R. 1283, 1284). Tom Hammond then offered him a job on No. 1 press but he refused to take this job because it was where Wingo, another Union member, had been working. (R. 1289, 1290). Powell after talking with Bill Robinson then left the plant and went to Farr's residence (R. 1291).

Wingo testified that he did not go to the office with

the rest of the men who accompanied Spear there (R. 1625) but remained in the yard until the men returned from the office. Kelly Hammond came around and shut the motors off, and Wingo went home (R. 1626). As he went out the front door he remarked to Farr, "Let's go; there is no use trying to work here." (R. 1644).

Farr testified that after he returned to the gin following the gathering in the office, he started his machine and commenced ginning cotton. (R. 1004). Then Kelly Hammond and Bill Robinson shut down the machinery. (R. 1006) Farr walked over to Bill Robinson and asked him what to do about it. Bill Robinson replied that he had nothing to do about it. (R. 1006, 1007), and stated there didn't seem to be enough Union men to run the machinery and he would say they should go home,—that would be his advice. Wingo, who was also present, spoke up and asked Bill Robinson if he was telling them to go home as a foreman, and Robinson replied "no, not as a foreman, but that is my idea, that you men had better go home." (R. 1007). Farr stood around a little while and then walked out to the front door of the plant (R. 1007). Wingo came along and they both left the plant (R. 1010). This was about 11 o'clock. After he got home Farr testified that he telephoned Louis Robinson and told him what had occurred. (R. 1013).

Andrade testified that after the men left the administration building he went back to where he had previously been working. The machinery started then stopped and Andrade went into the gin building. (R.

1709). He met Martin on the outside and Bill Robinson walked up to them. Wingo was also there (R. 1710). Robinson told them there were not enough union men to run the gins; that they had to run and the non-union boys wouldn't work with them. Wingo asked if that was an order given as a foreman, and he said "no, that was just a suggestion to avoid further trouble." (R. 1711). Andrade testified that they figured they were through there and picked up their things and went to Farr's residence.

Andrade also testified that Farr, after telephoning Mr. Robinson November 18th, came to his home and told them that Mr. Robinson had said to rest easy; that their pay would go on until the matter was settled (R. 1738).

Spear testified that after Mr. Louis Robinson instructed the men to return to their jobs they all left immediately and returned to the job. Spear prepared to start up the No. 1 gin but the engine did not start and after a few minutes Kelly Hammond, Burdine and Mitchell came in (R. 1507-1509). Kelly Hammond and Bill Robinson stopped Farr's gin. (R. 1509). Bill Robinson told them that would not do, that Mr. Robinson wanted the machinery to run (R. 1511, 1512). Somebody said they weren't going to work with the Union men, (R. 1513) and Bill Robinson said if the Union men couldn't run the place they had better go home until the matter was straightened out. Farr asked if that was an order and Bill Robinson said "no, that is a request;" that he only wanted to straighten out the trouble and thought it would be a good idea for them to

go home. (R. 1514, 1515). Spear talked to Kelly Hammond about farming and then sat down on the stairs. He testified he was stalling for time waiting for someone to come around. Upon cross-examination he testified he was waiting for Mr. Louis Robinson to show up (R. 1602). However, Mr. Robinson never came out to straighten the matter out and Spear left and went to Farr's house (R. 1518).

The undisputed testimony shows that no official of the Company knew that the Federal members had left or that the non-union men refused to work with them until after the Federal members had left the premises. There was no evidence which in anyway connected the management of the Boswell Company with these unauthorized acts of the employees on November 18, 1938.

It is clear from the foregoing that the Board's finding that "representatives of the company initiated, led, and countenanced the entire anti-union demonstration" (R. 533) and were the principal molesters of the Federal members, is not only unsupported by the evidence, but is contrary thereto. There was no evidence whatever that any of the so-called supervisory employees either instigated or led the anti-union demonstration, nor was there any evidence that the so-called supervisory employees or any other representative of the management at any time discussed the union with the non-union men who were the actors in the incident of November 18, or that they incited any of the non-union employees by act or conduct of any other nature.

On the contrary it clearly appears from the hear-

say evidence of the complaining witnesses that one of the ringleaders in the demonstration was Jack Ely, who was not a member of the Federal and was merely a rank and file employee. Other non-union employees from the rank and file who actively participated in the demonstration were Bill Nichols, a carpenter, Mr. Brown, one of the engineers who was apparently the first to suggest that the union men be thrown out, and Tisdale, Sailsbury and Duncan, who led Spear to the administration building. The evidence is clear that the entire demonstration was a spontaneous uprising on the part of the great majority of the employees and was motivated solely by a feeling of resentment toward the Federal and its proposed program regarding the future operation of the plant.

E. THE ALLEGED REFUSAL TO REINSTATE

When Prior, Martin and Spear called at the office on November 19, 1938 and conferred with Louis Robinson and Gordon Hammond regarding the alleged evictions and the reinstatement of the Union men who had left the plant the previous day, Mr. Robinson informed them that the men could go back to work at any time but Prior stated they would need special protection. According to Mr. Robinson he told them he didn't think they needed special protection, and the Company would not furnish it, but they could go back to work, and he suggested that the Union men go and talk to the other employees and everything would be all right. The Union men indicated that they did not want to talk with the other employees, and Mr. Robinson told Gor-

don Hammond to feel out the men and see if any special protection was necessary. Even though Prior and his union committee did not accept Mr. Robinson's offer and return to work, the latter testified that he told them they would get their pay while the matter was being straightened out. Although there is some conflict upon this point, it is undisputed that all of the Federal members who left their jobs on the morning of November 18th did receive their pay without working until their respective jobs were completed.

On the afternoon of about November 26, 1938, or a little later, Prior, Spear and Martin conferred with Gordon Hammond. According to Mr. Hammond's testimony Prior stated that he wanted to know about putting the men who had left on November 18th back to work and Mr. Hammond told them they would take any of the men and all of them back when they had work for them, beginning the next morning or any time they wanted to come back. (R. 3024). Mr. Hammond's testimony with respect to this conference is uncontradicted.

The uncontradicted testimony of Gordon Hammond also shows that about November 27, 1938 he had another conference with Prior. At this conference Prior asked if the Company would take all of the men back in a body. When Mr. Hammond told him they didn't have work for all of the men at that time and could not take them all back in a body, Prior suggested that the Company take them all back and put them at the needless and unnecessary job of tearing down stacks of cake and re-stacking them for a few days.

Prior then stated that he would compel the Company to take all of the men back and threatened to tie up the plant if all the men were not immediately reinstated. (R. 3025).

On November 28th, 1938, Prior asked Louis Robinson about putting the men back to work, and Louis Robinson informed Prior that he would reemploy any of the men for whom there was work. He offered to re-employ Spear, but because he told Prior that Martin's job had been completed, Prior laid down the ultimatum that unless all of them were given work none of them would work. The evidence was uncontradicted that there was not sufficient work at the plant for all of them on November 28th, which was practically the end of the ginning season that year. Mr. Robinson's testimony that since November 18, 1938 there had not been positions available at the plant for all of the men who left on that day unless the Boswell Company laid off some men that were on the jobs at that time, was not only uncontradicted, but was fully supported by the other evidence and testimony in the case.

The testimony and evidence also shows conclusively that the Boswell Company did not employ any new or additional men after November 18, 1938 to complete the small amount of work which still remained to be performed before the ginning season ended, and that the work was completed with the men who were working at the plant prior to November 18 and remained on the job after that date.

The fact that the Boswell company did not replace any of the men who left, and in fact had no occasion to

do so in view of the undisputed fact that there was no work available, is as a matter of law sufficient to justify the Court in denying enforcement of the purported Order of the Board for the reinstatement with back pay of the seven Federal members who were ordered reinstated.

Union Drawn Steel Co. v. N. L. R. B., 109 Fed. (2d), 587, 592 (C. C. A. 3, 1940).

N. L. R. B. v. Yale & Towne Mfg. Co., 114 Fed. (2d), 376, 379 (C. C. A. 2).

F. W. Poe Mfg. Co. v. N. L. R. B. 119 Fed. (2d) 45, 48, (C. C. A. 4, 1941).

N L. R. B. v. Wilson Line Inc., 122 Fed. (2d), 809, 814 (C. C. A. 3, 1941).

N. L. R. B. v Lightner Publishing Corporation, 128 Fed (2d) 237, 241 (C. C. A. 7, 1942).

In **Union Drawn Steel Company v. N. L. R. B.**, supra, the Court held that the Board was not justified in ordering the reinstatement of a striker inasmuch as there was no position open for him at the time. The Court said at page 592:

"We come now to the question as to whether that part of the Board's order requiring the reinstatement of Eurick with back pay should be enforced. Had Union filled Eurick's place with another sweeper or laborer, there would be no question but that this portion of the order would be enforceable The right of the employer, for general economic reasons, to make use of a smaller staff to operate his business, to decrease his production, or to go out of business entirely if he desires to do so, we regard as indubitable. For example, if an employer has employed ten men to operate ten machines, he may, for such reasons, employ only nine men to operate the ten machines or he may operate only nine machines with only

nine men, or, if he chooses he may cease all operations."

In **N. L. R. B. v. Yale & Towne Mfg Company**, supra, the Court supported a finding of the Board that three employees of the respondent company had been discriminatorily discharged. The Board had ordered all three of the men reinstated. The court, however, modified the Board's reinstatement order because of the company's evidence that after the hearing it had reinstated two of the discharged employees, one of whom was later laid off for lack of work and the other of whom immediately quit, and that the job of the third had been done away with due to a change in operating conditions. The Court said (p. 379):

"If these assertions are true, and the petitioner's brief does not question them, the enforcement order to be entered by this Court should take note of them by appropriate provisions."

In **N. L. R. B. v. Wilson Line Inc.**, supra, the respondent operated an excursion steamer during four months of the year only. The Board ordered a number of employees who had been discriminated against reinstated with back pay, and directed that the Company pay "a sum of money equal to that which they would normally have earned as wages" less their net earnings during that period. The Court with respect to this back pay order stated at page 814:

"Likewise since the respondent is under no obligation to employ more men than its curtailed activities require . . . the Board's order may not be construed to mean that the respondent must rein-

state men for whom under its curtailed program no work is available, except through the displacement of employees having greater rights. Nor may it be required to give back pay to discharged employees for periods during which there would have been no work for them because of the curtailment."

Under these circumstances, there was no evidence which would in anyway justify the finding of the Board that the Boswell Company had discriminated against any of the men or that it had caused any of them to lose their employment. Although Prior denied that he instructed the men not to apply for work at the Boswell Company, the evidence is uncontradicted that none of them ever did apply for work after November 18, 1938. His statements made first to Gordon Hammond and later to Louis Robinson demonstrated conclusively that he assumed to act for all of his union members who left work on November 18, and that he did not intend to permit any of them to return to work unless and until they were all re-employed, notwithstanding the fact that he not only knew, but was also informed, that at the time his plea for reinstatement was made, there was not sufficient work available at the plant for all of his men.

A somewhat similar situation existed in the case of **N. L. R. B. v. Asheville Hosiery Company** 108 Fed. (2d) 235, (C. C. A. 4, 1939), where certain non-union men ejected the union men from the premises. The Board in that case held the employer responsible for the action of the union men on the ground that its conduct caused the employees to engage in the ouster and because it refused to offer the union men uncondition-

al reinstatement under a guarantee of protection. That portion of the order was reversed. Although there was evidence that the **manager of the plant** had made threats to a union leader that they might lose their jobs, and although the manager made speeches to the employees before the ouster intimating that the plant would be shut down if a Union was organized, the court held that the evidence was insufficient to show that the company was responsible for the ouster. The court stated at page 292:

“There is no substantial ground for the rejection of the overwhelming evidence that the hostile attitude of the great majority of the workers toward the Union proceeded from their sincere and spontaneous dislike of outside interference; and it is not enough to say that the management shared this feeling and manifested it in the statements of its supervisory officials.”

The court in the above case then held that it would have been mere speculation or conjecture to conclude that the company was responsible for the action of its employees in that action, and that the Board has the burden of proving its case with sufficient evidence to warrant the submission of such a case to a jury.

The Board in its Brief in connection with its discussion of the alleged refusal of the Boswell Company to reinstate the men, calls attention to certain alleged conversations which Spear, Farr and Powell each testified he had with Gordon Hammond at various times after November 18, 1938, during the course of which Gordon Hammond reputedly stated to each of them that he could return to work, but would have to drop

the union. Gordon Hammond categorically denied having made any such statement to any or either of these men at any time. When this straightforward and unimpeached testimony given in connection with this entire case is set against the testimony of these men, which in many respects is patently improbable and is thoroughly discredited and impeached, particularly in the case of Powell, it is clear that Gordon Hammond's version of the conversations which were had with these men was the only competent and reliable testimony with respect thereto and is entitled to full weight and credence.

Spear's testimony regarding his alleged conversations with Gordon Hammond after November 18, 1938, was as follows:

Spear testified upon direct examination that upon the afternoon of November 19, 1938, he talked with Gordon Hammond in the latter's office. He testified that Gordon Hammond told him they couldn't put over the union; that if the Company recognized the union it would probably cause friction between the union men and the other men; that he had no hard feelings toward Spear, and Spear could come back to work if he wanted to drop the union business. Spear testified he told Gordon Hammond "He wouldn't come back unless the other boys could come back" and that Gordon Hammond replied that Spear could come back but he didn't know about some of the others. (R. 1539-1542).

Upon cross-examination Spear fixed the date of this conversation as being in the early part of December, 1938, when he returned to the plant to get his tool

box. (R. 1545, 1546). When asked if Gordon Hammond told him why he didn't come back to work, Spear replied "Never", and then went on to testify that during this conversation Gordon Hammond offered to re-employ him, but the offer was not accepted. (R. 1547).

Gordon Hammond testified that on November 19, 1938, he investigated the incidents of November 18, 1938, preparatory to making a report on this incident to Louis Robinson, one of the employees he talked with was Spear. (R. 3176). He testified that he sent word to Spear to call at his office. (R. 3053), and when Spear arrived about 3 p. m. on November 19, 1938, he asked Spear regarding the cause of the difficulty of the day before. Spear said that that morning (referring to November 18th) someone told him about the meeting in the yard, and he said it was fine—that he thought they were going to ask him or talk to him about the union. Spear then told Gordon Hammond what had occurred. Gordon Hammond denied that during this conversation he said anything whatever to Spear regarding his returning to work or dropping the union. The evidence shows there was no purpose or occasion for Gordon Hammond to discuss the matter of Spear's re-employment with him at this time, as earlier on that same day Gordon Hammond had participated in the conference between Prior, Martin, Spear and Louis Robinson, at which Robinson had said the men could go back at any time, but Prior refused to let them return unless the Company would furnish special protection, following which Louis Robinson had informed them that if they did not go back to work they would

get their pay anyway until some determination of the matter.

Gordon Hammond further testified that he next talked with Spear about December 9, 1938, when the latter came to the plant to get some tools, and that when he asked Spear if he or any of the other men were coming back to work, Spear replied that he didn't think he would because he was planning on making a crop and so was Farr; that at the last union meeting Prior had taken it all out of their hands, and he didn't know what they were going to do; that Prior said he had a job for Martin, two of the Ely boys, and Johnston down south the first of January. Gordon Hammond testified he told Spear at this time that he could come back to work, but denied having told him he would have to drop the union. (R. 3053-3056).

Gordon Hammond also testified that he again talked with Spear about December 19th or 20th, 1938, when the latter returned to get his tool box. He testified that he asked Spear if he had found any land yet, and Spear replied that he hadn't made a deal, but he and Farr were both looking at some land. This was the extent of the conversation. (R. 3056, 3057).

Farr's testimony with regard to his alleged conversation with Gordon Hammond after November 18, 1938, was as follows:

He testified that he went to the Company's office about November 26, 1938, for the purpose of getting his check, and upon going to Gordon Hammond's office found Spear was there. While there he spoke to Gordon Hammond about coming back to work, and the lat-

ter informed him that "under these conditions" they could not use him at that time. (R. 1090).

Gordon Hammond in his testimony denied having any such conversation with Farr, either at the time testified to by Farr, or at any other time. (R. 3030, 3031).

Even assuming that Farr's testimony was true, and that Gordon Hammond's denial was disregarded, it is clear that the words "under these conditions" did not have the significance or meaning which the Board placed thereon. The evidence shows without contradiction or dispute that it was just about the time of Farr's alleged conversation that Prior called upon Gordon Hammond and demanded that all the men be taken back in a body, and suggested, if necessary, in order to provide work, that they be given a job for a few days tearing down and restacking sacks of cake, and threatened that if all the men were not immediately reinstated, he would tie up the whole plant. (R. 3024-3026). The expression "under these conditions", if such expression was in fact used, can only refer to the conditions exacted by Prior that all of the men be taken back in a body regardless of whether or not there was any work available for them.

Powell's entire testimony was, as hereinafter clearly demonstrated thoroughly discredited and impeached, and none of his testimony, and particularly that regarding alleged conversations with Gordon Hammond after as well as before November 18, 1938, is entitled to no weight or consideration whatsoever.

Gordon Hammond testified he never told Powell

at any time, either in substance or effect, that the union was all "hooey"—that it was just a bunch of fellows claiming something they couldn't back up (R. 3039); and that he did not tell Powell at any time that he could have a job if he would discontinue union activities. (R. 3041).

Gordon Hammond testified that the only times he talked with Powell after November 18, 1938, were as follows:

About November 28, 1938, Powell came to the office and wanted someone to write the insurance company regarding his injured finger. Gordon Hammond testified that he asked Powell what they were going to do, if they or he were coming back to work, and Powell replied that Prior would not let him. (R. 3040).

The only other conversation with Powell was in the latter part of December, 1938, or the first part of January, 1939. Upon this occasion Powell had a letter from the insurance company and wanted to know if there was a compensation check for him at the office. This was all that was said. (R. 3041, 3042).

When the evidence is viewed in its entirety, it clearly appears that when the dissension arose between the two groups of union and non-union employees, culminating in a number of the union employees leaving the plant on the morning of November 18, 1938, because the non-union employees apparently refused to work with them, the Boswell Company was confronted with and faced a very delicate and difficult situation, and one which would never have arisen had it not been for the fact that the plant superintendent,

Gordon Hammond, was absent from the plant that day.

The evidence shows without any contradiction or dispute that for several months prior to November 18, 1938, the Boswell Company and its employees were facing a grave un-employment situation by reason of the shortage of cotton and cotton seed to gin and process. Everyone, including Mr. Prior and the members of his union, as well as the management of the Boswell Company and all of its employees, knew and recognized that the 1938-39 ginning season would be very short and that there would be considerably less employment available and for a fewer number of men than had been the case in the previous season.

When Prior first contacted Mr. Louis Robinson on September 2, 1938, which was nearly a month before the ginning season commenced, Mr. Robinson called his attention to the fact that the Company was faced with a serious employment situation as they knew they would not have over a 10,000 bale cotton run, and he hoped Prior would not do anything that would aggravate the condition. (R. 2841). As a matter of fact the total number of bales ginned that season was only 9,944 (R. 3000), of which amount 6,785 bales, or more than two-thirds were ginned prior to November 18, 1938 (R. 3006).

Spear testified that when he, Martin and Farr, acting as union committee, met with Gordon Hammond about October 5th or 10th, 1938, for the purpose of trying to workout a schedule for the mill and gins in order to keep the men from being laid off, there were some men then working at the plant who were really not

needed. They were not doing very much work. (R. 1529).

When the oil mill shut down about September 27, 1938, a number of men were laid off, and it appeared unlikely that they would be re-employed. Prior therefore met with Gordon Hammond on October 8, 1938, and discussed the matter of re-employment of the men who had been laid off and not re-employed. Four of the eight men laid off were members of Prior's union, but so far as the evidence shows the other four were not. Gordon Hammond told him these four men had not been re-employed because they were not experienced in any part of the plant which was then operating, but he would give Prior's four men some work if they would apply. (R. 831, 832). Thereafter Prior's four men, namely, Andrade, Martin, Boyd Ely, and Farr applied for and obtained employment.

As a result of Prior's meeting with Gordon Hammond on October 8, 1938, and the meeting between the union committee and Gordon Hammond which was held along about the same time, the Company opened up and operated the oil mill between October 24 and November 15, 1938. The Company already had a large supply of cottonseed cake on hand and it would have been easier to store and hold the cotton seed uncrushed than the by-products from it, and there was no particular reason for operating the mill at that time, aside from providing additional employment.

When the oil mill closed down on November 17, 1938, a number of the men who had been working in the mill were necessarily laid off. Prior then went to

Gordon Hammond and told him they knew a number of men had been laid off and others would probably be laid off because of the smaller acreage and scarcity of cotton that year, and Prior and Spear, Martin and Farr, who had been called from their jobs in the plant for the purpose of attending the meeting, all suggested that the working hours be reduced to eight hours a day so that everyone would get a little work, rather than some of the men being laid off. There was no question raised as to the rate of pay, and in fact Spear stated that the union was not asking for any increase in pay, and that they were all familiar with the fact that there was a scarcity of cotton crop that year and they were familiar with conditions. They did not even discuss the re-employment of the men who had been laid off when the oil mill shut down. During this meeting Gordon Hammond informed them that he had intended closing down gin No. 4 that day. They asked him if there was not some way whereby the gin could be operated longer, and he told them he would see if he could not workout some plan to do so.

The evidence shows that as the result of this meeting the Company did not close down No. 4 gin as originally planned, but on the contrary Gordon Hammond issued instructions that commencing with the following day, November 18, 1938, all four of the gins should continue operating, but with shorter hours of operation.

The undisputed and stipulated evidence shows that one of the gins (No. 4) finally closed November 25, 1938, after operating off and on and some days less

than 12 hours; that one of the gins (No. 2) finally closed December 3, 1938; that one of the gins (No. 1) closed December 5, 1938; thereafter running part time until December 30, 1938. About half of the days during this last mentioned period this gin did not operate at all, and some of the days it did operate during said period it only operated two or three hours or half a day. The last of the four gins (No. 3) finally closed January 24, 1939, and operated only part time, because of lack of cotton to gin. The oil mill did not operate after November 15, 1938, except for a few days at a time after January 5, 1939, and then only for the purpose either of taking care of hot seeds and preventing spoilage thereof or for producing cake to be used as cattle feed.

The evidence shows without dispute that on November 18, 1938, the season was rapidly drawing to a close and the unemployment situation was becoming very acute, and all of the employees knew it would be only a matter of a very short time before a large number of them would be laid off because of the lack of any further work to be performed.

The flare-up occurring between the union and non-union groups of employees was, shown by the evidence, directly attributable to the employment situation and the attitude assumed by the union group that they were going to see that they had jobs at the plant regardless of any resulting loss of employment of the non-union group. All the employees realized it was merely a question of who would be laid off first and how many. This flare-up between the two groups of employees occur-

red without any advance warning or notice to the management of the company and on one of the few days that Gordon Hammond happened to be absent from the plant. When the non-union employees showed no inclination to continue working with the union men and some of the union group left the plant, Mr. Robinson was unexpectedly and suddenly confronted with a very unusual and serious situation. He and the Company, as shown by the evidence, had at all times since Prior first began his organizational activities in the early part of the year, endeavored to avoid any labor troubles and to maintain and preserve a neutral position insofar as the organization of the employees was concerned, and in fact fully co-operated with Prior and his union every time they made any suggestions regarding the ~~nized thsi limitation of authority is shown by the fol-~~ improvement of employment conditions. It was, as above pointed out, practically the end of the season and the Company was naturally interested in and concerned with completing the season's ginning work as expeditiously as possible, and without any inter~~employee~~s animus if same could possibly be avoided.

The management when confronted with this unexpected, serious and unusual situation very properly concluded that the best solution of the problem under the circumstances and one which would be fair to all of its employees and would not work any hardship on any of them, and at the same time would permit the completion of the ginning, was to carry the Federal members, who had left the plant, on the pay-roll until such time as the jobs at which they had been working

on November 18, 1938, would terminate anyway in the normal course of events.

There was absolutely no evidence which would support even an inference that the Company was discriminating or intended to in anywise discriminate against any of the men because of their union membership or otherwise. Had such been the case the Company would not have re-employed Joe Briley when he applied for work shortly after November 18th, and who was a member of Prior's union; nor would it have employed the other members of Prior's union, such as Lawrence Galvan, Ygnacio Galvin, M. Escobedo and Pete Galvan, all of whom continued to work from time to time as work was available, and without the necessity of any special protection being provided by the Company.

By adopting the procedure which was followed by the Boswell Company in this matter all of the members of the Federal who left the plant on the morning of November 18, 1938, received the same amount of pay which they would have received had they remained at the plant and continued to work until the end of the season, and the Company was able to and did complete the season's work without employing any new men or having to replace any of the Federal members who left. The evidence established very conclusively that the Boswell Company acted reasonably under the circumstances and did not discriminate against anyone.

The Board, both in its purported Decision and Order and in its Brief, attaches great importance to the letters which were sent by the Company to the various men who left the plant on the morning of Novem-

ber 18, 1938, notifying them that the operations in connection with which they had been employed and were being carried on the pay-roll had ceased. Mr. Louis Robinson's testimony as to the motive for these letters is logical and plausible. He testified that although it is not the usual practice of the Company to send registered letters to its employees informing them they have been laid off (R. 2933, 2934), where the employee is present at the plant when his job runs out (R. 2935), in the instant case the men in question were not present at the plant, and the sending of the letters was the most appropriate method of advising them of the normal termination of their respective jobs.

He had previously notified their representatives on November 19, 1938 that they would each be carried on the pay roll until the situation which resulted from the incidents of November 18 was straightened out, and he testified he thought it would be wise to mail each of them a letter so there would be no misunderstanding about the amount of pay which they might have coming (R. 2934).

Moreover the evidence shows that Louis Robinson had no direct contact with any of these Federal members after the conference with Prior, Martin and Spear on November 19, and consequently he wanted each of the men to know when his job ended and to counter-act any erroneous impression which may have been in the minds of any of these men that the Company was wilfully refusing to permit them to return to work, in view of the position taken by Prior at his meetings with the Company's officials on November 27 and 28,

at which he had laid down the ultimatum that if all were not re-employed, none of them would return.

The sending of the registered letters may have been unusual, but it is clear that the Company was confronted with a very unusual situation, and it handled the same in the best possible manner for all concerned.

Although Elgin Ely was not one of the men who left the plant on the morning of November 18, 1938, having left prior to said date because of an injured finger, he likewise was not available when the gin on which he had previously been working closed down, and it can not be said that it was unusual or in any way improper for the Company to notify him by letter that the ginning operation on which he had been employed was ended.

The evidence shows Elgin Ely joined the Federal November 11, 1938, but there was no evidence whatever that the Company knew of his membership in the Federal prior to the time of sending him the letter on November 28, 1938. So far as disclosed by the record the first time he did anything which would probably have the effect of calling the management's attention to the fact that he was a Federal member was when he participated in the picketing commencing December 2, 1938 (R. 1796). He testified that he never applied to the Company for work after November 14, 1938 and that he was unwilling to accept reinstatement with the same pay and hours which prevailed when he left. According to his testimony he was incapacitated by his hand injury from performing any work until December 2, 1938, and the undisputed evidence shows that

prior to that date the operation in connection with which he was last employed had come to a normal seasonal close. He was not physically able to perform any work at the time Prior discussed the reinstatement of the other men with Gordon Hammond on November 26 and 27, and with Louis Robinson on November 28, and so far as disclosed by the evidence Prior, as representative of the Federal, never at any time requested the reinstatement of Elgin Ely. Clearly Elgin Ely was not discriminated against in any way, and the Boswell Company cannot legally be required to reinstate him with back pay as ordered by the Board

It will be noted that none of the registered letters of which the Board complains were sent out until after Prior laid down his ultimatum to the management that unless all of the men who left the plant on November 18 were immediately reinstated, regardless of the amount of work available, he would tie up the plant to a point where none of its products could be moved.

As elsewhere pointed out in this Brief, the lay-off of any of the employees was considered both by the Company and by the employee as a final termination of the employment without any future obligation on the part of either one. This practice was well known to and recognized by all of the men as the evidence is replete with instances where the complaining union men themselves returned to the plant and applied for work after various lay-offs. Consequently the evidence does not support the finding

and contention of the Board that the receipt by them of the letters sent out by the Company indicated that further application for reinstatement would be futile.

In the case of Powell, the evidence shows without dispute that he did not leave the plant on the morning of November 18, 1938 because of any refusal on the part of the non-union employees to work with him, but on the contrary he left of his own free will and accord when there was work available for him to do, and did not thereafter at any time apply for work. As he testified, he decided to "just string along with the union." Moreover, as shown by the letter which was sent him by the Company on November 28, 1938 (R. 2864; Boswell's Exhibit No. 16) the job on which Powell had been working at the time he left the plant was the regular job of another employee named Fred Armenta, who was temporarily off because of an injury, but had recovered and returned to work on his regular job before November 28, 1938, and consequently Powell's services were no longer required at that time.

Furthermore the undisputed evidence shows that Powell, during the period of his last employment at the plant, was mostly engaged in the performance of odd jobs—as he put it "school boy jobs." (R. 1316). This also supports the other showings in the record that further work for Powell was practically exhausted at the time he left the plant.

Powell admitted from the witness stand in this case that he had previously been convicted of two

felonies, namely, a conviction in the State of Georgia on a stabbing charge (R. 1347), and a conviction in Kings County, California in January, 1938, on a bad check charge. In connection with this last mentioned conviction he served four months in the county jail as part of three years probation (R. 1303). He also admitted that prior to coming to California he had been indicted for murder. Powell's general worthlessness and criminal career is lucidly set forth in the record and is hereafter more fully set forth in this brief in connection with our discussion of his credibility as a witness.

In **N. L. R. B. v. Federal Bearings Co. Inc., et al**, 109 Fed. (2d) 945 (C. C. A. 2, Feb. 1940) it was held that the conviction of an employee for crime is justification for the refusal of the employer to reinstate him even though he has been wrongfully discharged.

On the basis of Powell's criminal record and the above cited decision, the Board's order for Powell's reinstatement is clearly unenforceable.

The Board found and states in its brief (p. 23) that "the Federal made one more attempt on January 18, 1939 when Prior inquired whether Robinson had changed his attitude with respect to reinstatement of the Federal members; Robinson's reply was that his position was unaltered." The record shows that this is neither a true nor a complete statement of the testimony upon which the above quoted statement is founded.

As previously related in our statement of facts, the record shows that on January 17, 1939 a meeting

was held at the Company's office at which there were present Prior and a number of Federal members representing the Federal; Mr. Louis Robinson and Mr. William Boswell representing the Boswell Company; Mr. Maurice Howard, a field examiner of the Board, and certain of the Boswell Company employees (R. 875, 876; 2875). During the course of this meeting the incidents of November 18, 1938 were discussed, and Mr. Howard made the statement among others that if he had been in Spear's place he would have shot all three of the men who led Spear to the office (R. 2876, 2877). During the course of this meeting Louis Robinson also again made clear and reaffirmed his previous statements to Prior upon several occasions that no foreman or anyone else was authorized by the Company to make any statements regarding any employee's membership or non-membership in any union, and that no employee's position would be affected because of membership in any union (R. 2887). On the following morning, to wit, January 18, 1939, Mr. Howard returned to the office and had a further conversation with Louis Robinson without anyone else being present (R. 2886). In the course of this last mentioned conversation Mr. Howard demanded that the company discharge all the non-union employees who had taken part in the events of the morning of November 18, 1938 and that the company hire Federal members in their places. He also demanded that the employees association be dissolved. When Louis Robinson stated it would be impossible for him to comply with these demands and refused

to accede thereto, Mr. Howard stated that if his demands were not complied with, he would call the Labor Board hearing and Mr. Robinson would get a lot worse. Mr. Howard took a pamphlet containing a number of Labor Board decisions out of his pocket and pointed out some of the decisions. When Mr. Robinson informed Mr. Howard that he thought none of those cases were similar to the Boswell Company's position, Mr. Howard stated, "all right, then you will get the Board hearing," (R. 2889, 2890). Mr. Robinson's testimony regarding this last mentioned conversation with Mr. Howard on the morning of January 18, 1939 was neither disputed nor denied.

Prior testified that he also called upon Louis Robinson on January 18, 1939 and informed Mr. Robinson that Mr. Howard had advised him to have a conference with Mr. Robinson for the purpose of determining whether or not Mr. Robinson's attitude and opinion had changed in reference to the refusal to reinstate the men that had been discharged prior to November 18, and those that had been evicted from the plant on November 18, and Mr. Robinson stated that his opinion had not changed, that he had not changed his position (R. 878). However, Mr. Prior in his testimony did not fix the time of this conversation. Louis Robinson testified that the conversation with Mr. Howard took place on the morning of January 18, 1939, and that the conversation with Prior took place on the afternoon of that day (R. 2891). He testified that when Prior called in the afternoon he said he was calling at the suggestion of Mr. Howard, and wanted

to know if there had been any change in the Company's position **after Mr. Howard's visit**. Mr. Robinson replied that Mr. Howard's visit had not changed the Company's position at all (R. 2892). This testimony of Mr. Robinson respecting the order of the two conferences was not denied.

The Board for obvious reasons makes no mention or reference whatever either in its Decision and Order or its brief to the conference held on the morning of January 18, 1939 between Mr. Howard and Louis Robinson. The Trial Examiner in his Intermediate Report likewise ignored the testimony with respect to said conference. It is clear that the finding made by the Board with respect to Prior's conference with Louis Robinson on the afternoon of January 18, 1939 can only be interpreted in light of the preceding conference between Louis Robinson and Mr. Howard; and when Louis Robinson told Prior that the Company's position had not changed since Mr. Howard's visit he had in mind the illegal and improper demands made by Mr. Howard not only that all the Federal members be reinstated, but that the Company in addition thereto should discharge all of the non-union employees who had taken part in the anti-union demonstration on the morning of November 18, 1938 and should also dis-establish the Association.

In addition to all the other reasons advanced above, it is clear under the law that if the Boswell Company owed any duty (which it did not) to reinstate the Federal members who left their jobs on November 18, 1938, that duty was discharged when

on November 26, and again on November 28, 1938, the officials of the Company offered Prior, as representative of the Federal, to take back any or all of those men when there was work available. When Prior rejected this proper offer by requiring as a condition for the return of any of the men that they be all taken back in a body, despite the lack of work at that time for all of them, the Boswell Company was thereby relieved of any possible obligation or duty to make any further offer of reinstatement. It was also thereby relieved from any liability for payment of back wages subsequent to the date of the offer. **N. L. R. B. v. Riverside Mfg. Co.** 119 Fed. (2d) 302-307 (C. C. A. 5, 1941).

F. THE ASSOCIATION

On the morning of November 18, 1938, after the disturbance in the plant yard, three of the employees came to see Louis Robinson and asked what they should do in connection with the disturbance. Louis Robinson told them he was not in a position to advise them and they would have to seek other advice (R. 2617).

A committee of five employees then went to Mr. Walch, the District Attorney of Kings County, and asked his advice. They informed him that the Boswell Company did not know they were going to see him but that they wanted to find out about organizing their own union because it was the sentiment of the employees that they did not want to pay tribute to an outside organization (R. 904, 905). The District Attorney

advised them that under the Wagner Act they had the right to organize their own union but he could not represent them because he had to be unhampered in order to handle labor troubles. He told them that independent unions had been formed at the Caminol Co. and the Lucerne Creamery, and suggested that Attorney Clerk Clement of Lemoore was more familiar with the Wagner Act than any other attorney in the county (R. 905, 906).

That afternoon three of the employees came to see Louis Robinson. They told him they had seen the District Attorney and had asked him about forming an employees' association and that the District Attorney had told them that such associations existed at the Caminol Co. and at the Lucerne Creamery (R. 2621). This was the first knowledge Louis Robinson had that any employees had gone to the District Attorney (R. 2621) and it was the first knowledge he had of the existence of employees' associations at the two companies mentioned.

That evening, after working hours, about 7:00 P. M. a group of employees met in the lobby of the administration building (R. 2448-2450) and discussed their conference with the District Attorney. About 70 employees attended and they discussed the possibility of organizing an employees' association. (R. 2404, 2405). They decided to hold a meeting later with Attorney Clement and discuss it (R. 2348). The evidence shows no connection whatsoever between Louis Robinson or any official of the Boswell Company and

the holding of this meeting on the evening of November 18th.

The men evidently gathered at this meeting before Gordon Hammond returned to the plant from Los Angeles on the evening of November 18th, as he testified that after he returned to the plant that evening he went to his office which was in another part of the administration building and started to make up the time cards for the men who had worked that day during his absence (R. 3125). When he was about half finished with the time cards he was called out of the office to weigh some cotton at the scale house and before leaving the office to weigh the cotton he talked with E. M. Roberson and Rube Lloyd, but there was no one else present (R. 3134). He asked them what the crowd was doing in the front office. They outlined to him the occurrences of that morning in the yard, and told him the men had come to the office that evening for the purpose of letting the Company know they were satisfied with their work and the way it was being managed and conditions in every way (R. 3135, 3136). This was the extent of Mr. Hammond's knowledge of the meeting.

Eugene Clark Ely testified that all but one or two of the employees attended the meeting on the evening of November 18th (R. 2346). The blank sheet of paper which was circulated and signed that evening contained 53 names (R. 2451, Board's Exhibit No. 19).

All the other meetings were held away from the plant. The organizational meeting was held November 28, 1938 in the American Legion Hall. As shown

by the minutes, 77 employees attended this meeting, including Eugene Clark Ely, Joe Briley, Ygnacio Galvan and Andrew Galvan (R. 2424, 2425). The evidence showed that these last three named men had joined the Federal some time prior to the date of this meeting, and that Eugene Clark Ely joined the Federal some time later (R. 2357). The employees hired Attorney Clement who attended the meeting and prepared the constitution and by-laws (R.2449). Attorney Clement also explained the set up with respect to the Association (R. 2350), and the constitution and by-laws were adopted. (R. 2406) (R. 2372, Board's Exhibit No. 18). Officers were also elected at this meeting (R. 2406). The Association collected dues from its members and paid its attorney (R. 2424, 2449). No financial aid or assistance of any type was given by the Boswell Company to the Association (R. 2424), and no official of the Boswell Company ever attended any of the meetings of the Association or participated in the formation or operation of the Association in any manner. (R. 2624).

Subsequent to the organizational meeting of November 28, 1938, 23 additional employees joined the Association (R. 2425) making a total membership of 100. Among the employees who became mmebers after November 28th were M. Escobedo, Lawrence Galvan and P. Galvan (R. 2426). Escobedo and P. Galvan were charter members of the Federal. (R. 840).

On November 29, 1938, the Association wrote the Boswell Company a letter, advising that the Association had been organized the previous day by 78 employees of the Company at Corcoran, which constituted

about 95% of the Corcoran employees, and giving the names of the officers who had been elected and the names of the Labor Relations Board. (R. 2427; 2609).

On January 11, 1939, the Association wrote the Regional office of the Board at Los Angeles, advising that the Association understood the A. F. of L. was pretending to represent the employees of the Boswell Company, but that more than 95% of the employees were members of the Association, which was organized November 28, 1938, under the National Labor Relations Act with a constitution and by-laws which the Board was invited to inspect, and stating that the Association wanted no interference on the part of the A. F. of L.; that its members were of the unanimous opinion that their purposes could best be served through the local organization without outside interference. (R. 2435). However, the Association received no response to this letter.

The officers and committeemen elected at the organizational meeting of November 28, 1938 held office until the regular annual meeting of the Association was held on April 5, 1939 (R. 2415). At this annual meeting the following officers were elected: Bill Willoughby, the shopkeeper, was elected president; Bill Nichols, a carpenter who works for hourly wages, was elected vice president; (R. 2415, 2416). Mr. McKeever, who does experimental work in the raising of crops, was elected secretary (R. 2417), and Samuel Brenes, one of the bookkeepers in the Company's office, was re-elected as treasurer. (R. 2417). An entirely new labor relations committee was elected. The men elect-

ed to this committee were William Overstreet, who worked in the gin at the Tipton plant; Bruce Clark, who was an electrician at the Corcoran plant, and Sam Robinson, who worked at the gins during the ginning season and did miscellaneous work around the plant during the slack season and who was paid on an hourly basis (R. 2417, 2418).

On April 15, 1939 the Association wrote the Boswell Company a letter (R. 2445) reading as follows:

“April 15, 1939

“J. G. Boswell Company

“Los Angeles,

“California

“Gentlemen:

“At the annual meeting of the J. G. Boswell Company Employees' Association on April 5, 1939, the question was raised from the floor regarding the unemployment of the Association members and a motion was made requesting the governing board of the Association to notify company officials of both Corcoran and Tipton that the Association is keeping a list of unemployed members, with their qualifications, and requesting the management to get in touch with the Association when new men are needed.

“At a meeting of the governing board of the Association on April 13, 1939, the secretary was directed to perform this duty, which is accomplished herewith. I do, however, wish to emphasize the fact that this is merely a request. We are not agitating for a closed shop but we do want to do everything reasonable and just to keep our members employed.

“Very truly yours,

“ H. G. McKEEVER,

“Copy to Mr. Louis T. Robinson, Corcoran, and
“copy to Mr. Leon Jones, Tipton.”

No demand was ever made by the Association for a closed shop and there was no evidence of any response from the Boswell Company to either of the letters sent by the Association. So far as shown by the record, the above mentioned letter of April 15, 1939, was the last activity on the part of the Association prior to the date of the hearing in this case.

The record discloses no activities of any kind on the part of the Association upon the property of the Boswell Company, except the gathering of a group of employees in the lobby of the administration building on the evening of November 18th, which meeting, as above mentioned, was held merely for the purpose of showing that the employees were satisfied with working conditions at the plant and also for the purpose of discussing the possibility of organizing their own independent union.

The finding and conclusion of the Board that the Boswell Company dominated and interfered with the formation and administration of the Association and contributed financial and other support to it and thereby violated Section 7 of the Act (R. 580) is based primarily upon the following facts or alleged facts: (1) That a number of alleged supervisory employees, as well as a number of other persons alleged to be closely allied with the management became members of the Association; (2) The claim that the Boswell Company was openly hostile toward the Federal and that the Association was promoted and organized solely for the

purpose of combatting the Federal; (3) That the Association never requested exclusive recognition, never sought to bargain with the Company, and never sought to secure a collective agreement; and (4) The claim that the Boswell Company permitted notices of Association meetings to be circulated in the plant during working hours and acquiesced in the activities of the Association promoters on Company time and property.

We submit that these findings and conclusions on the part of the Board and the alleged facts upon which the same are based are not only unsupported by the evidence, but are contrary thereto.

As hereinabove pointed out, none of the employees who became members of the Association had any authority whatever to in any manner speak for or represent the Boswell Company with respect to wages, hours or working conditions. In fact the Constitution of the Association provided that no employees exercising executive authority in the Company were eligible for membership. An executive was defined to be one who in his discretion makes decisions in the management of the Company or disputes over labor, wages, rates of pay, hours of employment or conditions of work arising between the employees of the Company and the Company (R. 2376; Const. Art. 111, Sec. 1).

The statements alleged to have been made by the alleged supervisory employees with respect to the Association as well as those with respect to the Federal were all heresay testimony introduced over the objections of respondents and were not supported by any credible or substantial evidence, and if, in fact, any such state-

ments were made, the same were not authorized, sanctioned or approved by the Boswell Company. So far as shown by the record all of the alleged supervisory employees, with the exception of Julius Hammond, were still working at the plant at the time of the hearing in this case and were available to the Board as witnesses had the Board desired to use them in an endeavor to produce direct, first hand testimony with respect to the statements alleged to have been made by the alleged supervisory employees. However, the Board did not see fit to call any of these alleged supervisory employees as witnesses and elected to rest its case almost entirely upon unsubstantial, uncorroborated, hearsay testimony.

We can find nothing in the National Labor Relations Act which prohibits supervisory employees from belonging to any labor organization. On the contrary, the Act specifically provides (Section 2, Sub. 3) that "the term 'employee' shall include any employee." Consequently the J. G. Boswell Company was not in a position, even though it had so desired, to prevent any of its employees from joining the Association, or any other labor organization they saw fit, and had it prevented or endeavored to prevent them from so doing, it would clearly have thereby violated the Act.

As heretofore pointed out in considerable detail, the evidence shows conclusively that the Boswell Company was not hostile to the Federal, either openly or otherwise, but on the contrary it cooperated with the Federal and adopted a number of suggestions made by the representatives of the Federal with respect to

working hours at the plant and never at any time refused to meet with the officers or representatives of the Federal or to discuss with them any of the matters which they desired to take up with the management. The undisputed evidence shows that the only time the officials of the Company refused to cooperate with the Federal was when the representatives of the Federal demanded that the Federal members who had left work on the morning of November 18th be reinstated in a body. The reason for such refusal was solely that at the time these demands were made, there was not sufficient work available at the plant for all of these men. The offer of the Company to give certain of these men employment from time to time as work was available was absolutely rejected by Prior as representative of the Federal.

The Boswell Company certainly cannot be charged with any violation of the Act merely because the Association failed and neglected to demand a working agreement between the Company and the Association or to request exclusive recognition. The Association did endeavor to some extent to bargain with the Company by writing the Company the letter of April 15, 1939 in which it requested the management to get in touch with the Association when new men were needed. Obviously, however, the Boswell Company was not in a position to control or insist upon any acts, either of omission or commission on the part of the Association, and had it insisted or even attempted to insist that the Association take more affirmative action in representing its members in connection with their relationship

with and employment by the Company, the Company might have found itself in the position of having to defend an unfair labor charge brought against it by the Association.

It should be borne in mind that the Association was not organized until November 28, 1938, and had been in existence for a period of less than six months prior to the date of the hearing in this case.

It should also be borne in mind that the Association was not organized until November 28, 1938, at which time the ginning season was rapidly drawing to a close, and there was a very substantial decrease in the amount of employment which was available. The undisputed and stipulated evidence shows that the oil mill had previously closed on November 15th; that only 4 of the 6 gins at the plant operated at all during the 1938-39 season, and then only with one shift of men per day; that one of these 4 gins had already ceased operations for the season on November 25th; that another of the gins closed for the season on December 3, 1938; that another of the gins practically ceased operations on December 5, 1938, and ran only part time thereafter until December 30, 1938, not operating at all some days and on others operating only for a few hours, and that the fourth gin, although it continued operating until January 24, 1939, operated only part time because of lack of cotton.

The evidence also shows that as the gins closed down and wound up the season's work there was little or no employment left for any of the men. It is clear that by the time the Association was in a position to

function, or in any event within a short time thereafter, the slack season of employment had arrived and there were few or no jobs available for which the Association could bargain with the Company. This condition still existed at the time of the hearing in this case. This is another factor which demonstrates conclusively that the Board's contention that the Association's alleged complete inactivity as a bargaining agency constitutes well recognized indicia and forms of company domination and support is wholly without any foundation.

Previous to the time that Louis Robinson wrote his letter of November 18, 1938, to the head office of the Company in Los Angeles he was aware of the anti-union demonstration that had taken place at the plant that morning, although he was not familiar with many of the details thereof, and he knew the non-union men, who apparently comprised the great majority of the employees, were considering the matter of ~~properly~~ forming their own organization, and he undoubtedly realized that if an independent union was organized it would be only a question of time until he, as an official of the Company, would be faced with the necessity of taking some position with respect thereto. Consequently he advised the head office regarding the events of that day and requested information regarding so-called "company" unions. (R. 2601-2603).

He testified that his purpose in writing the letter of November 18, 1938, in which he reported this matter was to call the attention of Colonel Boswell, the president of the Company, to the fact that the em-

ployees might form an Association and the Company might be called upon to recognize it, and he thought Mr. Boswell should be giving the matter some thought. (R. 2622, 2623). He further testified that in writing this letter he was merely reporting to the head office information obtained earlier in the day from the employees committee, and that his purpose in requesting Mr. Boswell to obtain any information he could regarding company unions was that he (Mr. Robinson) did not know anything about such unions and did not know what decisions the Company might be called upon to make and thought they should post themselves in advance of any action being taken by the Association if and when organized. (R. 2623, 2624).

The Board in its purported decision, as well as in its brief, emphasizes the fact that the non-union employees who first came to Mr. Robinson for advice following the incidents of the morning of November 18, 1938, and who later consulted with the District Attorney of Kings County when Mr. Robinson refused to advise them, were not docked in their pay for the time taken off from their work that day. It is contended by the Board that this was an act of favoritism toward the non-union employees who later formed their own organization, and is in contrast with the alleged hostility of the Company toward the Federal. This contention on the part of the Board is clearly without any foundation in, and is not supported by, the evidence, as the testimony of the complaining Federal members showed conclusively that they carried on their organizational activities while on the job, and although this fact was

known to the Company, it made no objection thereto. For instance, Andrade testified that he approached a number of the employees during working hours at the plant; that he did not ask them not to tell anybody that he was signing them up, and that he simply looked on that as one of his rights (R. 1722).

When Prior called on Gordon Hammond in the forenoon of November 17, 1938 for the purpose of endeavoring to work out a program for reducing the hours in the gins and spreading what little work was left to be done at the plant during the remainder of the season, Mr. Hammond went out to the gins where they were then working and had Farr, Spear and Martin come to the office and attend the conference, taking them away from their work (R. 1053, 1054). There was no evidence that any deduction was made from their wages for the time they were away from the job while attending this conference and discussing matters which the Federal desired to take up with Gordon Hammond.

The evidence also shows that during the early part of October Spear, Martin and Farr met with Gordon Hammond as a committee representing the Federal and discussed the matter of attempting to work out a schedule for the mill and gins which would keep the men from being laid off. There was no evidence, however, that their pay was docked for the time they spent away from their jobs while discussing this matter.

It is clear from all the evidence that the Boswell

Company in an endeavor to preserve its neutral position and to avoid any possible violation of the National Labor Relations Act did not display any favoritism toward either the Federal members or the Association members and accorded both groups equal opportunity so far as carrying on their respective organizational activities at the plant was concerned.

It is contended by the Board in their brief that the officers of the Association, and particularly the men who were elected to the labor relations committee of the Association, did not represent the rank and file of the membership. The Board, however, entirely ignores the fact, as shown by the undisputed evidence, that a new governing board was elected at the regular annual election held April 5, 1939, and at said time a new labor relations committee was also elected as hereinabove mentioned. The evidence shows that shopkeeper Bill Willoughby was elected president and Bill Nichols, a carpenter employed on an hourly pay basis, was elected vice president. The members of the labor relations committee elected at that time were William Overstreet, who worked in the gin at Tipton; Bruce Clark, an electrician who was paid at an hourly rate; and Sam Robinson who was a ginner and odd job man and was also paid at an hourly rate. All of these men were from the rank and file and the only officers who could by any stretch of the imagination be classified as not being from the rank and file were McKeever, a farming adviser whose headquarters were at the office of the plant and who was elected secretary of the Association, and Brenes, one of

the bookkeepers at the plant, who was re-elected as treasurer.

The evidence also showed without dispute or contradiction that the Association had a number of committees—membership, social, nominating, and finance committees—in addition to the labor relations committee. (R. 2419), and there was no evidence that any of these various other committees did not function.

There was no evidence whatsoever of domination or interference with the Association by the Boswell Company. The Board places much emphasis upon the fact that certain employees which it terms supervisory employees joined the Association; however, as previously pointed out, the evidence is clear that no member of the Association had any authority to hire or fire or speak for the Company on questions of labor relations, and Manager Louis T. Robinson and Plant Superintendent Gordon Hammond were the only ones at the plant who had any such authority. There was absolutely no evidence whatever that any of the men who joined the Association, whether alleged supervisory employees or otherwise, were in anywise acting for the Boswell Company in joining the Association or in participating in its activities or that they or any of them joined the Association at the instigation of any official of the Company. There was no evidence that the Company or anyone connected with its management even suggested that it was in favor of the Association, and the conclusion of the Board that the Boswell Company was behind

the Association and promoted and encouraged the organization of the Association for the sole purpose of combating the Federal is wholly without any support in the evidence. The evidence shows on the contrary that the Association was the voluntary and independent creature of the great mass of the employees who did not wish to associate themselves with or pay tribute to an outside labor organization.

The Board in its purported Decision and Order infers that after November 18, 1938 the Boswell Company employed only employees who joined the Association. There is no evidence in the record which would in anywise or to any extent support this inference, and there was no showing of any kind that the Boswell Company, either before or after November 18, 1938, or at any other time, inquired into the union affiliations, if any, of any of its employees or made membership in the Association or any other labor organization a condition of employment. On the contrary the record shows without dispute, as elsewhere pointed out in this brief, that quite a number of men whom the evidence shows were members of the Federal continued to work at the plant subsequent to November 18th. Moreover the record does not contain any evidence showing either the names or number of all the men who continued to work at the plant after November 18, 1938, nor their affiliations, if any, with labor organizations, excepting insofar as it was developed incidentally that some of the men who worked at the plant after November 18th were members of the Federal, and others were members of

the Association.

It is impossible to determine exactly how many of the employees who continued to work at the plant after November 18, 1938 were members of the Federal as the Trial Examiner erroneously refused to permit counsel for respondents to elicit any testimony from the Board's witnesses with respect to the roster of Federal members; and the only evidence as to the names of the Federal members which got into the record in this respect was such evidence as the Board and the Trial Examiner saw fit to permit in the record.

When the Board called Br. Brenes, the treasurer of the Association, as a witness, the Trial Examiner asked him if he desired counsel, and he stated he did not. (R. 2401). It should be noted, however, that the Association was not made a party to this proceeding and did not intervene in the case.

Under the authority of **N. L. R. B. v. Sterling Electric Motors**, 109 Fed. (2d) 194 (C. C. A. 9, 1940), the Association not being a party to the proceeding and not having appeared therein at the hearing, could not be disestablished as recommended by the Trial Examiner in his Intermediate Report. The Board in its purported Decision and Order modified this recommendation on the part of the Trial Examiner, and held that since the Association had never been recognized by the Boswell Company as the representative of its employees for the purposes of collective bargaining, it was not necessary to order the disestablishment of the Association. (R. 614); and the Board ordered that the Company refuse to recognize the

Association as the representative of any of its employees for the purpose of dealing with said respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment and other conditions of employment. It seems to us there is no distinction between an order disestablishing the Association and the order as made by the Board. Certainly the effect in either case would be the same, and if the Board's order should be enforced by the Court same would result in absolutely nullifying the right of the Association's members to self-organization and to collective bargaining which is conferred upon every employee and group of employees under the Act. We submit that based upon the evidence and the law, the order as made by the Board in this regard is contrary to law.

The evidence in this case wholly fails to show any unfair labor practice under Section 8 (2) of the Act, and the failure of the evidence in this regard is shown by many cases, some of which are the following:

N. L. R. B. v. Swank Products, *supra*

Cupples Co. Manufacturers v. N. L. R. B., *supra*

L. Greif & Bro. v. N. L. R. B., 108 Fed. (2d) 551, (C. C. A. 4, 1939)

Ballston-Stillwater Knitting Co. v. N. L. R. B., *supra*

In **N. L. R. B. v. Swank Products**, *supra*, there was evidence that Stevenson, an employee who had the authority to hire other employees under the direction of his superior, expressed himself in favor of an inside union at a meeting of employees. Six foremen were there, as well as the superintendent of pro-

duction of the employer. A committee was formed at that meeting, which committee consulted with the attorney for the employer, but that attorney refused to represent the committee. There was also evidence that during working hours the power had been shut off and a meeting of employees was held at the plant on company time. Stevenson and the foremen attended that meeting. Stevenson reported what occurred at that meeting to the vice-president. Thereafter solicitation for membership in the inside union was carried on in the plant without opposition from the management. There was evidence that the Independent collected dues but did not accumulate any strike fund. The Board ordered the employer to withdraw recognition of the inside union and cease interfering with it. This order was set aside by the Circuit Court. The court stated, as follows (p. 874):

“The Act does not purport to prohibit plant, or so-called ‘company’ unions, except where they are linked to the employer. That relationship does not arise from passive acquiescence of an employer, for acquiescence has none of the positive and aggressive quality contemplated by such words as ‘interfere’, ‘restrain’, ‘coerce’, and ‘dominate’, which we find in the Act.”

The court then stated that the evidence showed a genuine attempt on the part of the employees to form their own union to prevent what they considered to be a less advantageous external organization coming into the plant. As above pointed out, the court held that there was no showing of hostility by the management to the complaining union and there was no showing that the alleged statements by Stevenson and the fore-

men were made on behalf of the company, and held that the record did not sustain a finding of interference, domination or coercion.

In Ballston-Stillwater Knitting Co. v. N. L. R. B., *supra*, there was considerable evidence of activity upon the part of alleged supervisory employees. The court set aside an order of the Board based upon a finding that the employer had dominated and interfered with the formation of an employees' association, and the court stated as follows (p. 761):

"The testimony is uncontradicted that the officers of the petitioner had no hand in establishing the Association. It is true, as the Board found, that the chief reason for its formation was to keep out the CIO, but the plan of an 'inside' union was apparently the spontaneous reaction of a group of the employees, who circulated their petitions, got up their own meetings, engaged their own attorney to draft the constitution and by-laws, and paid their expenses, without suggestion or help by the petitioner. Concededly the petitioner made no financial contributions. It is true that the petitions for membership were circulated in the mills without protest by the management, and that employees who attended the April 9th meeting during working hours were not docked in pay. But it is also true that solicitation of members for the CIO occurred, as Ingersoll testified, during working hours Nor is the fact that employees who attended the April 9th meeting were not docked in pay sufficient evidence of domination or interference. There was no discrimination between those who favored the 'inside' union and those who favored the CIO. No one was docked, because, as the superintendent explained, he thought that if he was liberal and did not interfere with meetings the trouble would blow over."

The court also stated at page 762:

"There is not the slightest evidence in addition to the conduct of these 'supervisory' employees that the petitioner initiated the movement for an unaffiliated union. The most that can be inferred is that superintendent Hathorn knew that 'supervisory employees' were circulating membership cards for the Association during working hours, and that he took no step to prevent it. As a matter of law, in our opinion, this does not amount to domination or interference by the employer. There is no evidence that Hathorn would not have been equally lenient with regard to the circulation of petitions for membership in the CIO. Some solicitation for CIO members was done in the mills, although apparently less openly and to a less extent. No request was made for leave to circulate them openly and no demand that the circulation of Association cards be stopped. **To constitute domination or interference by the employer we think that it must appear that the employees are acting for him rather than for themselves, or that the employer in some manner gives aid to one group which he withholds from the other, or discriminates in favor of members of a labor organization or against non-members.** A union limited to the employees of a single employer is as legal as any other, and we know of no rule of law that forbids the employer to permit his employees to solicit memberships during working hours, provided he does not withhold a like privilege from the opposition and exerts no pressure upon employees to join the union."

(Emphasis ours)

In *Cupples Co. Manufacturers v. N. L. R. B.*, supra, the evidence showed the solicitation of membership in an inside union by employees who had authority to recommend the hiring and firing of other employees. Many anti-union statements were alleged to have been

made by these employees. The court set aside a Board order directing the employer to refrain from dealing with the inside union and disestablishing it. This case has been discussed above, but in considering this particular phase of the case the court stated (p. 115).

"We think that the doctrine of respondent superior can not, under the circumstances disclosed by the evidence in this case, be invoked by the Board to justify its finding that the Company dominated, interfered with and supported the formation or administration of the Association. As already pointed out, Miss Weitzel, in encouraging and attempting to influence members of the force with whom she was associated to join the Association, was engaged in the performance of no duty for the Company, was acting outside of the scope of her employment, and can hardly be said to have been furthering the business of her employer, even though she may have believed that she was doing so."

The court further stated (p. 116):

"It is our opinion that it was incumbent upon the Board, in order to sustain the charge that the Company had dominated, interfered with, and supported the formation and administration of the Mutual Relations Association, to prove, by a fair preponderance of the evidence, that the Company had, through its officers, its executives, or its authorized agents, committed acts amounting to domination, interference or support, or that it had aided, abetted, counseled, commanded, induced or procured the commission of such acts. In other words, we think that it was necessary for the Board to prove not only that acts amounting to interference with or domination or support of the independent union were committed, but also that with respect to the commission of such acts the Company virtually stood in the relation of either a principal

or an accessory. We are also of the opinion that no doctrine of imputed liability can be invoked by the Board in this case to bridge the hiatus in its proof."

See also: **Humble Oil & Refining Co. v. N. L. R. B.**, 113 F. (2d) 85, 92, (C. C.A. 5, 1940); **Continental Box Company v. N. L. R. B.**, 113 F. (2d) 93, 96, (C. C. A. 5, 1940); **Footte Bros. Gear & Machine Corp. v. N. L. R. B.**, 114 F. (2d) 611, 619, (C. C. A. 7, 1940); **Virginia Electric & Power Co. v. N. L. R. B.**, 115 F. (2d) 414, (C. C. A. 4, 1940; reversed and remanded 62 S. Ct. 344); **E. I. du Pont de Nemours & Co. v. N. L. R. B.**, 116 F. (2d) 388, (C. C. A. 4, 1940); **N. L. R. B. v. Sparks-Withington Co.**, 119 F. (2d) 78, 82, (C. C. A. 6, 1941); **Diamond T Motor Car Co. v. N. L. R. B.**, 119 F (2d) 978, 982, (C. C. A. 7, 1941); **Southern Ass'n Bell Tel. Employees v. N. L. R. B.**; **Southern Bell Tel. & Tel. Co. v. N. L. R. B.**, 129 F. (2d) 410, (C. C. A. 5, 1942).

G. THE FINDINGS OF THE BOARD ARE NOT BASED UPON SUBSTANTIAL EVIDENCE

The Board's findings and purported decision and order with respect to the Boswell Company are based almost entirely upon unsubstantial hearsay testimony which was erroneously admitted by the Trial Examiner over the objections of respondents. The Board cast aside and ignored almost entirely the direct competent and credible testimony of Louis T. Robinson and Gordon Hammond who, as shown by the undisputed evidence, were the only ones at the Corcoran plant who had any authority to employ or discharge any

employees and were the only ones who were authorized to speak for the Company with respect to any employment matters or with respect to any matters concerning its business, or who had any authority at all to bind the Company in any way or to any extent.

The Board, on the other hand, adopted and followed almost in its entirety the hearsay, and in many instances incredible, testimony of the complaining members of the Federal; particularly with respect to the alleged conversations between the witnesses and the alleged supervisory employees, and in a few instances, conversations with Gordon Hammond, which were emphatically denied by him.

The character of the testimony given by the complaining members of the Federal is clearly reflected and shown in the record; however, we will call attention to some of the most glaring inconsistencies in their testimony, their lack of credibility, and the general incompetency of their testimony, and also to a number of instances in which the testimony of some of these witnesses was impeached and discredited.

Martin was one of the principal witnesses for the Board. The complete unreliability of his entire testimony is demonstrated by the inconsistent and conflicting statements, some of which are as follows:

When questioned concerning the union meeting which was held the night of November 16, 1938, Martin testified there were some 18 or 20 persons present at said meeting, but he could name only nine of them, notwithstanding the fact that he was secretary of the union and had kept minutes of the meeting (R. 1235,

1236). Among the nine persons present who were named by him was E. C. Ely (R. 1235). When Martin was testifying later in the hearing, in connection with the Board's alleged case against the Associated Farmers, and was asked if E. C. Ely was present at said meeting of November 16, he first testified as follows:

"A. I don't remember about that meeting, whether he was or was not.

Q. Would you say he wasn't there?

A. He wasn't there during the meeting, I know.

Q. Well, would you say that he wasn't there sometime during the gathering.

A. No, wouldn't say he wasn't". (R. 2236).

The evidence shows without dispute that on November 17, Prior and the union Committee consisting of Spear, Farr and Martin met with Gordon Hammond (R. 862), and Prior testified that he reported the result of this meeting to a union meeting which was held on the night of November 17, 1938 (R. 1165). However, when Martin was asked upon cross examination if a union meeting was held on the night of November 17, 1938, he testified he did not remember whether or not such a meeting was held (R. 1237).

On cross examination, Martin testified that when he went to Colorado, after having worked for the Boswell Company, about 2 weeks in March 1938, he came back to Corcoran and went to work about May 17, 1938. When asked if the oil mill had started before he got back, he testified that it was not running when he got there and hadn't been for some time before (R.

1227). However, the undisputed and stipulated evidence shows that the mill was running May 17, 1938 and closed down that day and re-opened again July 1, 1938 (R. 3006, 3007).

E. C. (Eugene Clark) Ely, who was called as a witness by the Board, testified that he first went to a union meeting during January, 1939 (R. 1933), but testified that he had been in the same house where union meetings were held before that time. When he was asked on what occasions he had been in the same house where union meetings were held he testified positively that he had never been to a gathering of union members before January, 1939 (R. 1933, 1934).

However, Griffin, who also testified as a witness for the Board, testified that E. C. (Fat) Ely attended a regular union meeting on November 15th or 16th, 1938 (R. 1909, 1910), and Martin likewise testified that E. C. Ely was present at the union meeting on November 16, 1938 (R. 1235).

When Griffin's testimony was called to E. C. Ely's attention later in the hearing he admitted that as early as November 16, 1938, he had attended social gatherings of union members (R. 2361-2363) and testified that Griffin may have thought he was a member because he went around with union men (R. 2361).

L. E. (Elgin) Ely, who is a brother of Eugene Clark Ely and Boyd Ely (R. 1934) also testified as a witness for the Board. The complaint (paragraph 10 thereof) (R. 16) contained an allegation that his pay was reduced because of his union activities. The trial examiner found that this allegation was not sustained

by the proof, but the testimony of Ely in that regard is material in considering his credibility.

Ely testified, positively, that he received 40c per hour when he was re-employed in October, 1938 (R. 1777, 1778), that he worked for five days as press helper and then substituted for a sick pressman for two weeks (R. 1778), and that he received 40c per hour as pressman (R. 1803). He stated that he then resumed his job as press helper and he testified that during the week of November 12, 1938 his pay was reduced to 35c per hour, that he discovered that fact when he received his pay check for that week, and that he received only one check at the rate of 35c per hour (R. 1778, 1779, 1812, 1803).

Even when Ely was shown his time cards he insisted that he was receiving 40c per hour when he first went back to work (R. 1806), and that he knew how much he was paid (R. 1806). He said he kept a record of his time and handed it to Gordon Hammon (R. 1807) and that his check for the last week he worked was not based upon the 35c per hour basis.

Also he insisted that he left work on November 14, 1938. Even when he was shown his time cards (R. 1805, 1806), he denied working November 15th or 16th (R. 1813, 1814).

The testimony of Gordon Hammond (R. 2964-2980) and the records (Boswell's Exhibits 9 (a) to 9 (d), inclusive, R. 2971-2979), showed conclusively that Ely started work on October 24, that he worked one day as press helper and was paid 35c per hour, that he worked seven days as pressman and received 40c per

hour, after which he resumed his job as press helper on November 3rd and was again paid 35c per hour for that day and for the two following weeks. The trial examiner found substantially in accordance with these facts. Gordon Hammond's testimony and the records also show conclusively that Ely worked up until November 16, 1938 with only two hours credited to him on November 16, because that is the day he left as a result of an injured thumb.

Boyd Ely, when called as witness for the Board, testified in considerable detail, despite the repeated objections of the respondents, to certain conversations which he claimed were had in July 1938 with Tom Hammond and certain other employees, in which certain discriminatory remarks with respect to the union were alleged to have been made.

He was asked on cross examination if he attended the union meeting on November 19, 1938, at which the boycott was declared against the Company, and stated 'I think I did.' He admitted that he had been taking part in the boycott and had also been on the picket line (R. 1763). When asked to state what was said and done at the meeting at which the boycott was declared, he could not remember. (R. 1766, 1767).

Griffin, who was also a Board witness, and who testified over the objections of respondents to certain alleged conversations with Tom Hammond in November, 1938, during the course of which certain discriminatory remarks were alleged to have been made by Tom Hammond, testified positively, both on direct and cross-examination, that he worked continuously from

the time he was employed in August, 1938, until November 17, 1938 (R. 1862, 1895). He also testified positively that he was not laid off at any time after the first week in August, 1938, until November 17, 1938 (R. 1895). He was shown Board's Exhibit No. 3 (R. 790) which consisted of the Social Security records kept by the Boswell Company for all employees, and which records showed the period during which employees worked and the amount of pay they received. Counsel for the Board during the hearing had previously made the statement for the record that the Board had not attempted to contest the accuracy of the records contained in Board's Exhibit No. 3 (R. 1559, 1560). Griffin's Social Security record showed that no wage payments were made to him between the week ending August 11, 1938, and the week ending October 13, 1938. After being shown this record he was asked if he was not laid off from August 11, 1938, until on or about October 7, 1938 (R. 1895). Despite this incontrovertible evidence, he testified he thought there was a mistake in the books (R. 1897), and, so far as he could remember, he worked continuously during this period of time, and that during said period of time he was sewing cotton seed cake and cleaning up around the gin, and feeding suction, and hauling cotton seed into the warehouse. He also testified positively that he was paid continuously at the rate of forty cents per hour during the period from August, 1938, on through to November 17, 1938, and that he worked ten or eleven hours each day during that time. (R. 1897, 1898).

He also testified positively that he was not even

laid off several days at a time during that period (R. 1906) and that he did not receive any checks for a week's work as low as \$24.80.

In addition to the record contained in Board's Exhibit No. 3, Gordon Hammond, the plant superintendent employed by the Boswell Company, identified and explained Griffin's time cards for the period above mentioned and explained in detail the nature of the work done by him and demonstrated conclusively that the records contained in Board's Exhibit No. 3 were correct (R. 2985-2996) Gordon Hammond's testimony and the time cards (R. 2981-2984; Boswell's Exhibits Nos. 22 (a) to 22 (g), inclusive) showed that Griffin worked only two days during the week ending August 5, 1938, and that he was paid at the rate of 35c per hour during that week. The records and testimony further conclusively show that Griffin was not again employed by the Boswell Company from that time until the week ending October 13, 1938 (R. 2986).

Griffin was asked if during his last week of work at the plant, that is, the week ending November 17, 1938, his work did not consist chiefly of hauling planting seed, and he testified that it did not, that his work consisted chiefly of sewing planting seed (R. 1898). He was also asked if there was some work done by him during that week which consisted merely of cleaning up around the plant, and he testified he didn't know as there was that week. He was also asked if he knew how many hours a day he worked during his last week of employment, and he testified he was sure it was around 12 hours a day (R. 1899). The foregoing testi-

mony was directly contrary to his time card for the week ending November 17, 1938 (Boswell's Exhibit No. 22 (G), R. 2984), which showed, first, that the principal work performed by him during said week was hauling planting seed, and that he did not do any work of sewing planting seed during said week; and, second, that during part of three days during said week he was engaged in clean-up work around the yard; and third, that there was only one day during said week in which he worked 12 hours, and the rest of the time during said week he worked only from 4 to 11 hours a day, which fact showed conclusively that the work on which he was engaged was running out.

When Griffin was asked by Board's counsel whether he became a member of any labor organization, he could not remember either the name or the number of Prior's local Union, of which he became a member (R. 1864).

The foregoing instances are illustrative of the complete unreliability and lack of credibility of Griffin's entire testimony.

Johnston, who was also called as a witness by the Board, testified at the hearing that he had never talked over the matters to which he testified with any members of the union before getting on the stand and that he had not discussed the case with anyone whomsoever before testifying (R. 2195-2198).

Frank A. Mouritsen, Attorney for the Board, was later called by the respondents as a witness and he testified that he had a signed statement by Mr. Johnston, which was taken by someone on the staff, prior

to the time Johnston testified, and that he would say before Johnston testified he had discussed the case with him because that was his invariable practice.

Johnston also testified, in answer to a direct question, that he was not employed. In this regard, Mr. Mouritsen stated in his testimony that he had called Mr. Johnston out of order so that he could take employment elsewhere and that Johnston left after he testified and he thought he was employed in Hanford (R. 2798, 2799). Mr. Mouritsen later explained his answer and stated that he let Johnston go for the purpose of taking up employment, but he did not know whether Johnston was employed when he was testifying.

H. N. Wingo, when called as a witness by the Board, testified regarding certain alleged conversations with Joe Hammond, during the course of which Joe Hammond was alleged to have made certain derogatory remarks regarding the union. He also testified as to the periods of his employment and the nature of the work done by him. He further testified regarding the events of November 18, 1938. Upon direct examination he testified that he worked around the plant in Corcoran hoeing weeds and cleaning up for a few days in April, 1938, and that he was then laid off at the plant and got a job as pumper in the 749 District (R. 1613).

Upon cross-examination Wingo was shown his Social Security record, (Board's Exhibit No. 3, R. 784), which showed conclusively that he was not on the payroll between the week ending March 24, 1938, and

the week commencing about July 1, 1938. He admitted that he was laid off by the Boswell Company about March 24, 1938 (R. 1628), but insisted, notwithstanding the record, that he went back and worked a few days after the mill shut down the latter part of March (R. 1629), and that after the mill shut down he was only off two or three days until he was employed for a short time, and then laid off again, and that he helped set pumps and hoed weeds around the warehouse during these few days.

The lack of memory of this witness is shown by the fact that both on direct and cross-examination he testified that he made application to join the Union on September 2, 1938. However, he did not remember what union meetings were held, except he stated he attended one about November 16. He did not remember if this was the first meeting he attended, and did not even remember the date he was initiated (R. 1635, 1636). Neither did he remember when he received his union button, nor how many other employees of the Boswell Company were present at the union meeting which he did attend (R. 1636).

Gilmore, who was called as a witness by the Board and whose alleged grievances against the Boswell Company were apparently the basis of Prior's first charge against the Company which was filed with the Board on July 17, 1938, testified that he engaged in union activities; that the first thing he did was try to organize a union in the spring of 1938 before he was laid off; and that he talked with the majority of the boys about the union even when he was working there.

He also testified to a number of alleged conversations with Gordon Hammond in June and July, 1938, during the course of which he claimed the union was discussed and all of which conversations were denied by Gordon Hammond. Gilmore further testified that sometime after July 4, 1930, he left the employment of the Boswell Company because there was nothing to do and he worked at various jobs around San Jose and Monterey. At one time during his testimony he stated that he went to Salinas during that time and worked in the fruit and vegetables, (R. 1848). Later he denied that he went to Salinas or worked in the fruit and vegetables (R. 1849). He then stated that during the time mentioned he worked at San Jose in cold storage and at Monterey in fruit canneries and that he also worked on the highway (R. 1849). He later stated that during that same time he worked in San Jose and also in the fish cannery at Monterey (R. 1851, 1852). At any rate he didn't return to work for the Boswell Company until September, 1931 (R. 1849).

He first testified that when he went back to work in 1931 he worked in the lint room until 1936 (R. 1833). Later he testified that when he returned to work in 1931 he helped put up the oil mill which had burned down (R. 1849), and later that he worked at odd jobs such as grinding barley (R. 1850). He stated that since 1936 he worked in the seed house but when the mill was not running he would cut weeds, do painting and odd jobs (R. 1833, 1834).

He first testified that he worked practically all of the time from 1931 to 1938 (R. 1832, 1834). He later

admitted on cross examination that in that period during the depression he was laid off and that even Gordon Hammond, the plant manager, went out and ran a ranch (R. 1850). Also he admitted that he was laid off a few weeks in 1937, during which time he took a trip to Oregon (R. 1852), and that he was laid off about three weeks in 1936 (R. 1850).

Gilmore's testimony throughout was contradictory and unreliable and is entitled to little or no weight, especially is this the case insofar as his testimony relating to union activities is concerned. In this regard Gilmore testified that the first thing he started to do was to try to organize a union. He said he could not place the date or the month but that he started some time in the spring of 1938 (R. 1834). In answer to the following question by counsel for the Board, "that was before you were laid off?", he answered, "Yes" (R. 1835). Later he testified that he started talking about the union in January (R. 1835). He said that he talked with a majority of the boys about the union when he was working there, that after he was laid off he was down to the plant sometimes two or three times a week all through the summer and even after the union was started he kept talking to the boys. He stated that he never did sign any of them up but that he asked them to come to meetings (R. 1836). He testified that he joined the union but that he couldn't remember the date, except that it was some time in the summer of 1938 (R. 1843).

The record shows that in spite of this alleged activity and his invitations to others to come to the meet-

ings and the fact that he also joined the union and purported to be one of the early union organizers at the Boswell plant, he was not mentioned by any of the witnesses as having been present at any of the meetings. The evidence shows that he did not apply as a charter member of the union and did not sign anyone up in the union.

Farr was also one of the principal Board witnesses and over the objections of respondents was permitted to testify to a number of conversations with alleged supervisory employees, particularly Joe Hammond and Tom Hammond, in which they were alleged to have made certain discriminatory remarks respecting the union. He was also permitted to testify, over the objections of the respondents, to the incidents of November 18, 1938. The Board in its findings adopted practically all of his testimony as true. However, his testimony was thoroughly impeached as shown by the following instances:

Farr testified he worked in the oil mill as a linterman from January 1938 until the end of the seed crushing season in September 1938 (R. 984), whereas the undisputed and stipulated evidence shows that during the period of time he claims he was working at the mill, the mill was in fact closed for a total of about two and one-half months during such time.

Farr claimed that he complained to Gordon Hammond on different occasions that the working hours at the Boswell plant were too long (R. 986, 1032), but reluctantly admitted upon cross examination that during the four months period that he worked for the

San Joaquin Cotton Oil Company at Bakersfield in the summer and fall of 1937, he worked the same hours per day and received approximately the same amount of pay that he had been working and receiving while employed by the Boswell Company (R. 1026).

On direct examination he remembered and testified in detail to alleged conversations and other matters concerning which he was examined. However, upon cross-examination, his answers were evasive and showed lack of observation and memory.

Farr testified that he worked in the gins and elsewhere about the plant both in 1937 and 1938. The undisputed and stipulated evidence showed that considerably over four times as much cotton was handled and processed at the plant in 1937 as in 1938, and that more than twice as many men were employed in the ginning season 1937 as in the ginning season of 1938. In spite of these facts, Farr testified as follows:

“Q. . . did you notice any difference between the two seasons, so far as the volume of cotton in the Boswell Plant?

A. I don't know as I paid any attention to it. I had all I could do both times.” (R. 1021).

He was also asked the following questions and gave the following answers:

Q. Did you notice any difference in the number of men employed at the Boswell Company during the two seasons, that is, as between the '37 and '38 season and the '38-'39 season?

A. No, sir, I didn't have any way of knowing the employment of both sides.

Q. I am just asking you for your observation as to the number of men around the plant.

Did it impress you that there were more men during one season than during the other?

A. There were men working last year that never had worked before."

When this last answer was stricken as not responsive, he testified as follows:

"THE WITNESS: I couldn't say.

Q. (By Mr. Clark) In other words, so far as you are concerned, you cannot tell us?

A. I couldn't tell you.

Q. Whether or not you noticed that there were more men in one season than in the other, is that true?

A. I couldn't say for I don't know." (R. 1021).

On cross-examination Farr at first testified that up to the time of one of his alleged conversations with Gordon Hammond in July or August 1938, he had not told anybody he was attempting to organize the American Federation of Labor Union at the Boswell plant at Corcoran and hadn't been attempting to organize (R. 1047). Later, on cross-examination, however, he was obliged to and did admit that as early as March 1938 he met with Prior (R. 1047); that he also met with Prior again in July, and delivered the list of names of employees furnished by Gilmore (R. 1048). He was asked if he had any meeting with Prior at his house from July clear on until September 2, and replied "I can't remember of it. I can't testify to that,

for I don't remember of anything up until about that time." (R. 1049).

When asked on cross-examination concerning statements made by various persons present at the meeting which was held November 17, 1938, between Prior, Spear, Martin and Farr, and Gordon Hammond, Farr could remember practically none of the statements which Prior had previously testified were made by various parties at this meeting (R. 1059-1061).

Powell was also one of the complaining union men who was called as a witness in this case. The Board's purported decision and order was based to a considerable extent upon the testimony of Powell, particularly his testimony regarding an alleged conversation with Gordon Hammond which was supposed to have been had some time after Powell left the plant on the morning of November 18th, 1938, and in which conversation he claimed that Gordon Hammond told him he could return to work provided he would surrender his membership in the Federal (R. 546). The Board as well as the trial examiner found that Powell's entire testimony was substantially worthy of credence (R. 530). However as shown by the record there never was a witness whose testimony was more thoroughly discredited and impeached than was the testimony given by Powell in this case.

A large part of Powell's testimony was devoted to his alleged spying upon the Federal and his alleged reporting thereon to Gordon Hammond. He testified upon direct examination that about November 6, 1938, Gordon Hammond asked him to attend

meetings of the Federal and find out who their leaders were, and that he could have a job as long as he wanted, provided he did not have anything to do with the Union (R. 1261). He claimed that after that he attended Union meetings and reported to Gordon Hammond who the officers were and who was present (R. 1264), and that he continued to spy upon the Union and report to Gordon Hammond every day or so between November 1st and 16th, 1938 (R. 1398). Powell's testimony regarding these spying activities was so palpably false and improbable, particularly in view of the fact that Gordon Hammond was already cognizant of the fact that a Union was being organized at the plant, having been first informed by Prior on September 2, 1938, and again on October 8, 1938, and having also been informed thereof by the Union committee, consisting of Spear, Martin and Farr, who met with him in the early part of October, 1938, all of which had occurred some time before the alleged spying arrangement was made, that even the Trial Examiner did not place any reliance on this part of Powell's testimony and did not even make a finding thereon in the Intermediate Report. However, both the Trial Examiner and the Board accepted as the gospel truth the portion of Powell's testimony which related to an alleged conversation with Gordon Hammond some time after November 28, 1938, saying that his testimony was substantially worthy of credence, despite the fact that Powell was thoroughly discredited and impeached and the alleged statements were categorically denied by Gordon Ham-

mond (R. 3037-3040). Gordon Hammond testified on the other hand that about the later part of November, 1938, Powell came to the company's office and wanted someone to write the workmen's compensation insurance company regarding an injury which had previously been sustained to his finger. At that time Gordon Hammond asked Powell if they (referring to the Federal members) or he were coming back to work. Powell replied that **they** would not let him. Gordon Hammond asked him who, and he said "Mr. Prior" (R. 3040).

The evidence affirmatively shows that Powell was engaged principally in the performance of seasonal work and odd jobs. His testimony shows that he originally came from Georgia to California in 1921 and lived in California off and on after that (R. 1297, 1298); that prior to the time that he first went to work for the respondent Boswell Company in August 1936 he had been in Georgia and had not been employed for about two years (R. 1298, 1304). When he first started to work for the Company in August 1936 he did odd jobs until about September 1936 (R. 1305). Then he worked in the gins until the ginning season ended in January or February 1937 (R. 1306). He was then put to work in the power plant where he oiled and wiped machines and kept things spick and span. He continued on that job until sometime in August 1937 (R. 1306). He then took a couple weeks vacation, but was laid off immediately after he returned (R. 1307). A few days later he was given a job digging ditches and doing work around the plant

(R. 1307). He continued at this type of work until September 1937 when the gins opened up and he was given a job tying cotton (R. 1308). He remained at this job until about September 27, 1937, when he injured his finger (R. 1258). He was off about two months with this injury (R. 1258) and during the time he was off with the injury he received workmen's compensation payments (R. 1308, 1309). After he had been released by the doctor he returned to work (R. 1258, 1309). He was put to work doing cleaning up work and other odd jobs (R. 1259, 1318). He continued doing this type of work until about the first of January 1938 (R. 1317), but did not work steadily during this last mentioned period (R. 1319). About the first of the year 1938 Gordon Hammond offered him a job as watchman (R. 1310, 1311, 1320), but he did not take it. Near the end of the year 1937 he got to drinking and gambling and stopped working at these odd jobs for Boswell Company, and left and went to Los Angeles and San Bernardino (R. 1320, 1321).

The Social Security record (Board's Exhibit No. 3, R. 785) shows that Powell received a check in amount of \$12.60 for the week ending January 6, 1938, but on cross-examination he testified he did not recall working or receiving this check. (R. 1322).

Prior to leaving for Los Angeles in January 1938 he had issued a worthless check and after he left he was arrested and was brought back to Kings County in February 1938, was convicted of a felony based upon the issuance of such worthless check and was

sentenced to and did serve four months in the county jail as a part of three years probation which was granted him (R. 1303). In addition to the worthless check upon which he was convicted he had also prevailed upon Gordon Hammond to endorse for him another worthless check in amount of \$60.00 which he had drawn on a bank in Georgia (R. 1323), in which bank he had no account (R. 1332). He was not working for Boswell Company when he got Hammond to endorse this check (R. 1349). He had cashed this \$60.00 check endorsed by Mr. Hammond and lost the money in a poker game (R. 1325, 1326). Gordon Hammond was later obliged to pay the check but he did not sign any complaint against Powell, and Powell later repaid this \$60.00 check out of his salary (R. 1329). Powell also admitted on cross-examination that in addition to his conviction on the bad check charge he had also previously been convicted of a felony (stabbing) in the state of Georgia (R. 1347).

After Powell was released from jail, following his conviction on the bad check charge, he returned to work for the Boswell Company on July 3, 1938 (R. 1259) and thereafter worked until he left the plant following the incidents of the morning of November 18, 1938. Powell never applied for work after this last mentioned date (R. 3079).

When questioned at the hearing in this case regarding the nature of the bad check charge upon which he had been convicted, he testified that it was a gambling debt and that he had purchased chips in a poker game with it. He was thoroughly impeached

and discredited by the original transcript in the preliminary hearing in said criminal case. (R. 1359; 2947). Said transcript showed without doubt that the complaining witness had testified in Powell's presence that he cashed the check for Powell and gave him three \$5.00 bills. It likewise demonstrates that Powell himself testified and did not deny that he received three \$5.00 bills for the check in question. The transcript further shows that he was given an opportunity to make any comment which he chose and he made no comment. When confronted with this documentary proof Powell testified in this case that he could not recall anything that happened at the hearing. (R. 1334-1335).

Powell admitted also the issuance of another worthless check for \$60.00 and the fact that he induced Gordon Hammond to endorse it for him. The record shows that Gordon Hammond at no time brought criminal charges against Powell but that the check in question was issued by Powell upon a bank in which he had no account. (R. 1630-1632).

Powell testified on direct examination that he attended the charter meeting of the union on November 5, 1938 and that he told Gordon Hammond the next day about his attendance at the meeting. (R. 1265, 1266). However, upon cross-examination he denied having given this testimony and testified that he did not attend any union meeting or gatherings of union men prior to November 14, 1938. (R. 1370). He first testified on cross-examination that he had known or heard since July 13, 1938 that Prior was

trying to organize the union. (R. 1372, 1373). However, he later testified that it was only about three months before November 18, 1938 that he first heard these rumors. After having testified that he attended the charter meeting of the union held November 5, 1938 he later testified that he first saw the charter November 16, 1938. (R. 1391).

On direct examination he testified that he talked with Gordon Hammond about the union on November 6, 1938. (R. 1260). However, upon cross-examination he admitted that he was mistaken regarding his previous testimony and that he was also mistaken as to the date of the first union meeting he attended. He then claimed that since he first testified he had talked the matter over with his wife who had refreshed his memory. (R. 1399).

Powell also admitted that since first taking the stand he had in addition to discussing his testimony with his wife, also discussed the same with Prior, notwithstanding the trial examiner's admonition to all witnesses that they were not to discuss their testimony in the case with anyone other than Board's counsel. (R. 1400).

He testified definitely that he did not know his good friend Martin had joined the union until November 16, 1938 (R. 1411, 1466) but he later identified his application for union membership (Boswell's Exhibit No. 5, R. 1415) which was dated November 11, 1938, filled in in Martin's handwriting, and he admitted that he turned his application for membership over to

Martin whom he knew was handling the Secretary and Treasurer's duties. (R. 1413, 1466, 1467).

He testified on cross-examination that about November 20, 1938 he had a conversation with Gordon Hammond with reference to a letter he had received from the Company and asked Hammond what it meant. Upon request of counsel for respondents he produced the letter referred to in said conversation and it appeared therefrom that the letter was dated November 28, 1938. (R. 1447, 1448; 1451).

The court in reviewing this case has the power and it is the duty of the court under the law and the authorities to pass upon the credibility of witnesses and the weight and sufficiency of their testimony. **Foote Bros. Gear & Machine Corp. v. N. L. R. B.**, 114 Fed. (2d) 611, 621 (C. C. A. 7, 1940) (reaffirmed 121 Fed. (2d) 802, 1941); **N. L. R. B. v. Union Pacific Stages, Inc.**, 99 Fed. (2d) 153, 158 (C. C. A. 9, 1938).

It is also fundamental that the Board has the burden of proof (**Hazel-Atlas Glass Company v. N. L. R. B.**, 127 Fed. (2d) 109, 114 (C. C. A. 4, 1942); **Foote Bros. Gear & Machine Corp. v. N. L. R. B.**, *supra*,) and that such burden is not sustained by uncorroborated hearsay testimony, such as that relied upon by the Board in the instant proceedings. (**Union Drawn Steel Co., v. N. L. R. B.**, 109 Fed. (2d) 587, 592 (C. C. A. 3, 1940); **Martell Mills v. N. L. R. B.**, 114 Fed. (2d) 624, 629 (C. C. A. 4, 1940); **N. L. R. B. v. Illinois Tool Works**, 119 Fed. (2d) 356, 363 (C. C. A. 7, 1941).

III.

THE CHARGES AGAINST RESPONDENT
EXCHANGE

A. THE FACTS

The only charge and allegation in the Amended Complaint upon which the Board found the Exchange guilty of violating the Act was the charge and allegation that on or about March 2, 1939, the Exchange, for the purpose of discouraging membership in the Federal, discharged Margaret A. Dunn, herein called Mrs. Dunn, for the reason that it **suspected** that she had engaged in and was engaging in union activities. (R. 9; 21).

Although it was also alleged in the Amended Complaint that the Exchange in discharging Mrs. Dunn was acting directly and indirectly in the interest of respondent Boswell Company for the purpose of discouraging membership in the Federal (R. 21), the evidence did not establish and the Board did not find that such was the case.

The Board contends that Mrs. Dunn was discharged solely because of pressure alleged to have been exerted upon Mr. Glenn by a number of citizens in the community to have her discharged, and that such alleged pressure was the result of the ~~local~~ trouble at the Boswell plant, because two of Mrs. Dunn's daughters were seen talking to Prior at the picket line at the Boswell plant in February 1939.

It was and is the position and contention of the

Exchange that Mrs. Dunn was discharged solely for good cause, and not because of any union activities, suspected or otherwise, nor because of any pressure as found by the Board. The reasons for her discharge, as clearly established by the evidence, were: (1) her physical condition and resulting inability to handle the work properly; (2) her habit of drinking liquor while at work, which was offensive to the other operators; (3) her inability to get along amicably with the other operators in the office, which resulted in dissension between her and the other operators, at least one of whom threatened to quit because thereof; and, (4) her attitude and conduct toward subscribers, which resulted in numerous complaints about her work.

The Board either ignored, or lightly brushed aside, the great mass of direct, competent and credible testimony, which fully supported these contentions of the Exchange, and which evidence was in many instances fully corroborated.

Mr. Glenn testified that about two or three years before March 1, 1939, he first noticed a change in Mrs. Dunn's physical condition, and she informed him at the time that she had been examined by a doctor, who told her she was afflicted with a serious malady and might have to have an operation. (R. 3225-26) He testified that about a year later there was a very noticeable change in the manner in which she was performing her duties. She would brace herself with a pillow when she was sitting at the switchboard and was nervous, and there were times when she would go

to work that she would call a relief operator and go home. (R. 3228).

He testified that about this time he began receiving some complaints about her work, and the complaints thereafter increased in frequency. (R. 3229). Upon being asked to name the complainants, he gave the names of seven or eight business men or farmers in the community who registered such complaints, including Blake Crary, cashier of the bank in Corcoran, and testified that the complaints about Mrs. Dunn were coming in right along. (R. 3230, 3231).

Mr. Glenn testified that about a year before March 1, 1939, he first began smelling liquor on Mrs. Dunn's breath, and a number of times thereafter noticed a bottle of liquor in the ice box at the Exchange. About three or four months after he first began smelling liquor on her breath she told him the doctor had advised her to drink port wine for her strength. (R. 3236-3238). At this time the Exchange had five other operators, including Mrs. Woodruff and her husband, who in addition to acting as part-time operator, also acted as lineman. (R. 3239).

He also testified that during the year and a half immediately preceding March 1, 1939, he noticed there was dissension among the employees in the office. (R. 3240).

Mr. Glenn testified that about November, 1938, he asked Mrs. Dunn why she was not paying more attention to her health, and suggested she lay off and take a rest for awhile, but she stated she had to have money. (R. 3243). He also informed her that the other opera-

tors were complaining very bitterly about her drinking, and that one of them, Mrs. Woodruff, had threatened to quit because she could not stand the dissension that was going on in the office. (R. 3246, 3247).

He testified that in the last part of January 1939, he called Mrs. Dunn into the back office and told her that Albert Armor of the Boswell Company had complained that she was running around nights with Fred Galusha, and they objected very strenuously because Fred Galusha was superintendent of the Anderson-Clayton Gin company and since she was handling their intimate business calls over the phone they objected to her running around with a competitor very much (R. 3250); that Mr. Armor had made this complaint to Mr. Glenn on the morning of the same day he (Glenn) talked with Mrs. Dunn (R. 3251). She told Mr. Glenn that she did not consider it was any body else's business what she did on her own time, and he told her that so far as the personal element was concerned it was none of his business, but so far as the business element was concerned he was going to make it his business and if that thing was going to continue he wanted her to resign. She cried and told him she was very sorry he felt that way about it, and he assured her that she must stop the thing because of the slips that were possible, and she assured him she would stop. He also spoke to her about the dissension that was going on in the office, told her that the girls were complaining and that this dissension in the office would have to stop. (R. 3250-3252). Mr. Glenn testified that Albert Armor, at the time of complaining about Mrs. Dunn running

around with Galusha, had mentioned there had been a leak of information through the Board a couple of years before, and that through that leak one of the Boswell Company's customers had lost a very valuable concession, and Mr. Armor stated if there were any more leaks they felt they should hold the telephone company responsible. (R. 3252).

Glenn testified that about the middle of February, 1939, Mrs. Dunn called him to her home. When he got there she asked him if he had heard anything about a petition that was being circulated. He asked her what the petition was. She said it was a petition to get her discharged because her daughters had gone down to the gin (R. 3255). He told her that he had not heard anything about any petitions of that kind, that she needn't worry—then she went on to say that the girls had talked the morning before about the pickets being down at the gin and she asked them why they didn't go down there and see. The girls had said they hadn't seen any pickets before, how it was worked, so she advised them to go down there and see. He told her the fact of a petition being circulated could have no bearing at all "on our plant", he couldn't take cognizance of that because the exchange was a public service corporation and must keep neutral in everything of that kind. (R. 3255-3256). He also testified that when Mrs. Dunn mentioned the matter same was the first he had heard anything about a petition being circulated and was also the first he had heard anything whatsoever concerning Mrs. Dunn's daughters being seen talking to the pickets. (R. 3257).

Mr. Glenn testified that about 8:00 o'clock on the morning of March 1, 1939, Mr. Woodruff, who was the husband of one of the operators who had been employed at the Exchange for many years, came to his (Glenn's) office in the bank building, and told him Mrs. Woodruff had decided to resign her position. Mrs. Woodruff had also personally advised Glenn that she was going to quit. (R. 3261-3262). Glenn then went to the telephone office and called Mrs. Dunn into the back office and told her that Mrs. Woodruff had informed him that she had made every effort to get along with Mrs. Dunn, but found it impossible to do so, and that she wanted to quit. He told Mrs. Dunn that on account of her physical condition and use of liquor that was so offensive to the girls, that he wanted her to resign. She told him that she couldn't resign; that she simply had to work; that she would go out and apologize to the girls and make every effort to get along. (R. 3260). After Mr. Glenn had talked with Mrs. Dunn in the morning, he went out to his ranch and when he came back about 2:00 o'clock that afternoon, Mrs. Dunn ran past him sobbing hysterically as he entered his office. (R. 3262-3263). When he entered the office he noticed that the faces of the other operators were white and they were very much distraught. He then went on in to the back office, and while he was sitting there the phone rang and it was Mrs. Dunn calling him. She asked if he would come to the house and talk to her, and he told her that he did not want to talk to her any more at that time, and would not go out to her house, that he thought the best thing for her

to do was to stay at home and rest. She then asked if he was going to let her come back, and he told her he did not know, that he would let her know later. (R. 3262-3264).

Mr. Glenn testified that on the morning of March 2, 1939, he telephoned Mrs. Dunn, and when she asked whether he was going to let her come back to work he told her no. (R. 3274-3275).

On the evening of March 1st, and again on the morning of March 2, 1939, Glenn had a conversation with Mr. Dunn. Mr. Dunn desired to know why his wife had been discharged. Mr. Glenn stated that the only reason he discharged Mrs. Dunn was because of her physical condition, that she had to drink liquor to sustain herself to keep going, which was very offensive to the other girls, and that it had got to the place where he had to decide between Mrs. Woodruff and Mrs. Dunn, and he let Mrs. Dunn go. (R. 3265-3267). He also informed Mr. Dunn about the complaints that were coming in, and that shortly before these conversations a party had come to him and mentioned the fact that there had been some talk about getting up a petition to the Railroad Commission asking that Mr. Glenn discharge Mrs. Dunn because of the rotten service she was giving subscribers. (R. 3272-3273).

Mr. Dunn informed Mr. Glenn that he was not interested so much in Mrs. Dunn's going back to work at the office as he was in clearing any reflection that might be cast upon the girls for going down to the Boswell gin. Mr. Glenn assured him that the girls going down to the gin had nothing whatsoever to do with

the discharge of Mrs. Dunn. (R. 3277, 3278), but it was very unfortunate that the girls had gone to the picket line when they did, because there had been some labor trouble in 1934, at which time the whole community had been paralyzed for thirty days due to a strike and this previous labor trouble was still fresh in the minds of everyone in the community, and as long as the picket car remained down at the Boswell gin the people in the community would still be jittery about labor trouble. (R. 3280-3282; 3285-3286).

Glenn also testified that he had never seen any petition circulated by anyone requesting Mrs. Dunn's discharge; that no such petition was ever presented to him by anyone, and that prior to the time of discharging Mrs. Dunn on March 2, 1939, no pressure of any kind had been exerted on him to discharge her. (R. 3276).

Mrs. Dunn, in giving her version of the matter testified, over the objection of respondents, that it had been reported to her about February 15, 1939, by Mr. Galusha, manager of the San Joaquin Ginning Company, who had obtained the information from another party, that a petition was being circulated by some unknown parties to have her discharged because her daughters had been seen talking to the pickets at the Boswell gin. (R. 2497-2500). She testified that the following day (February 16, 1939) she asked Mr. Glenn if he had heard about this petition, and he said he had not, but stated he had been approached by a number of men about having her discharged on account of leakage on the Board and the girls being seen associating

with the union men, but her work had been satisfactory, and he would not discharge her unless presented with actual facts. She further testified that during this meeting they also talked over the labor trouble at the Boswell gin, and he told her "what everybody else knew in town" that there had been a disturbance, and that any little thing might cause an awful lot of disturbance in town (R. 2500-2501).

She also testified that on Saturday morning of the same week, which would be February 18, 1939, she talked with Mr. Glenn again in her home. (R. 2502). She testified she told Glenn she had talked with Mr. Galusha, who had told her he had talked with Mr. Riley, who in turn had talked with Bill Boswell, who had stated in effect that he, Bill Boswell, was going to get her job and was not going to tolerate having any of the Dunn family associating with the pickets. Respondents strenuously objected to this fourth-hand hearsay testimony relating to what Bill Boswell purportedly told Riley, who told Galusha, who told Mrs. Dunn, but all such objections were overruled. W. W. (Bill) Boswell, when called as a witness by the Exchange, categorically denied having made any such alleged statement to Riley or anyone else. (R. 3206, 3207). She testified she did not remember what reply Mr. Glenn made, excepting only that they just talked over the situation again, and he asked if the girls were going out with any of the men, and she said no. (R. 2502-2505).

She testified that her next conversation with Mr.

Glenn was on the morning of March 1, 1939, in his office. She claimed he told her pressure was being brought to bear too heavily on him, and he would have to ask her to resign, stating there was nothing personal about her work, but she refused to resign. (R. 2506).

Mrs. Dunn testified that the following morning, March 2, 1939, Glenn telephoned and told her not to return to work (R. 2507), stating that she was getting too old for the work and was sick, and he thought she ought to stay home. (R. 2508).

On March 14, 1939, Mrs. Dunn filed a charge with the Regional Office of the Board in San Francisco against the Exchange. This charge was signed by her personally, but was never served on any of the respondents. (R. 1).

She testified, over the objections of respondents, that on March 21, 1939, she talked separately with three parties named Riley, Slaybaugh and Boyett, and sought their advice about pressing the charges, and requested some of them to be witnesses for her and to use their influence with Mr. Glenn to get her job back. They all advised her against pressing the charges. (R. 2909-2916). As the result of the advice given her by these persons, none of whom were in anywise connected with respondents, she telegraphed the Regional Director not to send a representative to investigate the case; that everything was satisfactory. (R. 2517).

On April 4, 1939, Mrs. Dunn wrote the Regional office of the Board in San Francisco advising that the matter had not been settled satisfactorily, and request-

ed that they hold the case open until hearing from her again. (R. 2518, 2519).

She testified over the objection of respondents that after again talking separately with Riley and Boyett, she wrote the Regional office of the Board in San Francisco on April 14, 1939, requesting that her case against the Exchange be dropped, and stating she would not be available for interviews with anyone. Her signature on this letter was acknowledged before a Notary Public. (R. 2520-2526; Board's Exhibit No. 23). Boyett helped her write the letter (R. 2527).

The Fourth Amended charge upon which this case went to hearing was signed and filed by Prior on May 4, 1939. (R. 3). There was no showing in the evidence that Mrs. Dunn ever authorized Prior, either directly or indirectly, to sign and/or file this charge on her behalf.

Despite the fact that she had requested the Board on April 14, 1939, to drop her case against the Exchange, she and her husband and daughter, who, with the exception of Mr. Glenn, were the only witnesses called by the Board in support of the alleged case against the Exchange, were each compelled to appear and testify against the Exchange under the compulsion of a subpoena. (R. 1669; 2497; 2560).

Upon cross-examination Mrs. Dunn admitted that about three years before she filed her charge against the Exchange she was seriously ill, and that during the year immediately preceding March 1, 1939, she was in pain from time to time while working at the job, and had mentioned that fact on occasions both to the other

operators and to Mr. Glenn. (R. 2541). She denied, however, that she ever drank liquor while on duty, and that she kept any liquor in the ice box in the office at the Exchange. (R. 2542). She admitted that during the year immediately prior to March 1, 1939, she had on occasions gotten into arguments and disputes with customers of the Exchange while handling their calls, but denied she had any more arguments or disputes than any other operator. (R. 2543). She admitted one of the customers she argued with was Mr. Crary of the bank. She also admitted there was plenty of other occasions when she had words with customers, but claimed that during the year previous to March 1, 1939, there had been less arguments than ever before. (R. 2544).

Mrs. Dunn also admitted on cross-examination that upon the occasion of her second conversation with Mr. Glenn, the date of which she fixed as March 1, 1939, he called attention to her illness, and asked her why she didn't give up her position in view of the fact that her husband was working. (R. 2546-2547). She also admitted that on the day Mr. Glenn asked her to resign, he told her there had been complaints made against her about the service. (R. 2548). She also admitted that several months before the hearing she told Mr. Glenn that she had to take four glasses of port wine a day for her health, but claimed she did not keep any wine at the office and did not drink while on duty. (R. 2551-2552).

Upon cross-examination Mrs. Dunn also testified that she had never become a member of any labor or-

ganization, and in particular that she was not a member of any labor organization with which Prior was connected, and had never in any manner assisted or attempted to assist any of the organizations mentioned in this case (R. 2574-2575).

Mr. Dunn testified he was positive his wife had never become a member of a labor organization, and so far as he knew she had never assisted a labor organization in any manner and had never attempted to assist any labor organizations in any manner. (R. 2571-2573).

Mr. Dunn when testifying to his conversation of March 2, 1939, with Mr. Glenn, testified that Mr. Glenn made the following statements, "I went into the Exchange the other day and I met your wife coming out of the door, she was half crying. I went on in and Lillian Fowler was crying at the board." "I just can't stand that stuff." (R. 2576).

All of Dorothy Dunn's testimony went in over the objections of respondents. She testified she was Mrs. Dunn's daughter, and that on February 1, 1939, she first met Mr. Sprecher, an attorney for the Board, while making a bus trip from Los Angeles to Corcoran (R. 1669); that Prior met them at the bus station in Corcoran and they all drove to her home in Prior's car. She and Sprecher went into the house, leaving Prior in the car, and found Secord there with her brother and sister. (R. 1670, 1671). Secord was an engineer employed by the Boswell Company (R. 1678), and there was absolutely no showing that he was authorized to

speak in any way for any of the respondents.

She further testified that after Sprecher left the house, Secord told her it was bad for her to be seen with Prior. (R. 1672). That she saw both Sprecher and Prior on the street in Corcoran the next day, and did not see Prior again until about February 8, 1939, when she and her sister stopped and talked to him at the picket line at the Boswell plant. (R. 1673). Prior came over to their car and she and Prior talked over a few personal things about her knowing Sprecher; also they talked about the "Boswell strike" and about the hearings that would be held. (R. 1674). She also testified that while talking with Prior, Riley and his daughter drove by and waved to them. This was the last time she ever saw Prior or Sprecher. She testified that two or three days later she met Secord in a soda fountain, and he told her she was very much in wrong with the people of Corcoran because she had been seen at the picket line, and that she should apologize to W. W. Boswell, the brother of J. G. Boswell, owner of the Boswell Company, as W. W. Boswell was very angry because she had been to the picket line. (R. 1675, 1676). However, she never talked with Mr. Boswell or Mr. Glenn regarding this matter. She testified she did not know either Prior or Sprecher before February 1, 1939. (R. 1678, 1679).

At the conclusion of Dorothy Dunn's testimony all of the respondents moved to strike all her testimony upon the ground that there was no showing that the Board had jurisdiction over the respondents and that her testimony was hearsay, incompetent, irrelevant

and immaterial. These motions were denied. (R. 1681, 1682).

It is stated in the Board's Brief (page 35) that "Early in February 1939 Mrs. Dunn's daughter, Dorothy, was observed speaking to Federal members who were picketing the Boswell Company's plant . . . ; on subsequent occasions during the month, Dorothy and her sister, Margaret, were also seen talking to Federal organizer Prior." It is also stated in the Brief, on the same page, that the Dunn family soon began to receive information from local citizens that Dorothy was in wrong with the people of Corcoran, particularly with the Boswell Company's **president** because she had been seen on the picket line.

Obviously these statements are not supported by Dorothy Dunn's testimony upon which they are based. In fact these statements are not even in accordance with the Board's findings on the matter. (R. 587).

Mr. Glenn's testimony was subsequently corroborated by Mr. Woodruff and Mr. Crary, who were called as witnesses by the Exchange.

Mr. Woodruff, who had been employed by the Exchange as lineman since July 1929, and whose duties required him to go in and out of the office every day (R. 3309, 3310), testified that about June or July 1938 he noticed a bottle marked "Port Wine" sitting on the ice box in the office. Mr. Glenn came by and asked him who the bottle belonged to, and he replied that he guessed it was Mrs. Dunn's. Afterwards he asked Mrs. Dunn why she had left the bottle there, telling her Mr.

Glenn had asked about it, and she said she forgot to put it away.

He further testified that in August or September 1938 he saw a bottle of wine, which was partly full, under the counter in the operating room. Mrs. Dunn told him she had been to see a doctor, who prescribed the wine for her, and she was using it for nourishment; that she couldn't eat any food at all; that was the only thing she had for nourishment. (R. 3311, 3312; 3317; 3319).

Mr. Woodruff also testified he had upon different occasions when he was in and out of the office smelled liquor on her breath. (R. 3313, 3314).

He also testified that in the latter part of February, 1939, he talked with Mr. Glenn at the latter's office in the bank building, and told him he had gone to the telephone office and found Mrs. Woodruff crying; that when he asked her what the trouble was, she said she and Mrs. Dunn had a misunderstanding. Mr. Woodruff requested that Mr. Glenn investigate and discharge Mrs. Woodruff if she was in the wrong. (R. 3315, 3316).

Woodruff also testified that at times he saw Mrs. Dunn taking a drink while she was on duty, and particularly on the morning when he talked with her about the middle of 1938 about the bottle of wine on the ice box, at which time she told him she had been to a doctor and hadn't had anything to eat for a couple of days; that she couldn't have solid food on her stomach, and the wine was the doctor's prescription. (R. 3320).

Blakely Crary, cashier of the First National Bank

of Corcoran, when called as a witness for the Exchange, testified that he had been connected with the bank since 1934, and before that time was assistant cashier of the predecessor bank that had closed, and was assistant conservator of the old bank after its closing. He testified that he had known Mrs. Dunn ever since he came to Corcoran in 1930; that the bank had two trunk lines and four telephones, and he also had a telephone in his home, and recognized her voice over the telephone. He testified that during the two year period preceding March 1, 1939, he complained to Mr. Glenn a number of times regarding the service rendered by Mrs. Dunn when she was on the switchboard, and in particular he told Mr. Glenn in January 1939 that he (Crary) had attended a dinner party a few nights before and the subject of the poor service of the Exchange was discussed, and one member of the party said that they intended to complain to the Railroad Commission unless the service was improved. (R. 3303-3305).

He further testified that during the two year period prior to March 1, 1939, he never had any trouble with any of the other operators, and did not register any complaints with Mr. Glenn regarding any of the operators besides Mrs. Dunn. He also testified that he used the telephone a great deal—probably 20 or 30 times a day, but he never had any complaints to make against anyone except Mrs. Dunn (R. 3307), and he always recognized her voice when she was on duty. (R. 3308).

B. The Board's Findings with respect to the Exchange are not supported by substantial evidence.

As stated above, a substantial part of the testimony adduced by the Board in support of its alleged case against the Exchange was incompetent hearsay testimony, particularly the conversations which Mrs. Dunn testified she had with various parties other than Mr. Glenn, and all of Dorothy Dunn's testimony.

Mrs. Dunn's entire lack of credibility and the lack of credibility of Dorothy Dunn is clearly demonstrated by the record. The following testimony is pertinent in considering the unreliability of their entire testimony:

Dorothy Dunn testified she first met Sprecher on the bus while coming from Los Angeles to Corcoran about February 1, 1939 (R. 1669, 1670). However, her mother, Margaret A. Dunn, stated in the sworn charge which was filed with the National Labor Relations Board at San Francisco against the Exchange, March 14, 1939, and the jurat of which was dated March 13, 1939, that "the accusations came because my daughters were talking to Mr. Prior, a labor organizer. They, however, were receiving a personal message through Mr. Prior from Drexel Sprecher, a National Labor Relations Board attorney, who one of my daughters met in Los Angeles long before there was any labor trouble in Corcoran." (R. 1). Mrs. Dunn admitted that the reference in the above quoted portion of the charge to one of her daughters referred to Dorothy Dunn. (R. 2534). Dorothy Dunn also testified that after coming to Corcoran she received a letter from Mr. Sprecher and about February 8 she stopped at the picket line at

the Boswell plant and spoke to Prior about this letter, and they discussed a few personal things about her knowing Mr. Sprecher (R. 1673, 1674). This fact supports the statement made by her mother that she (Dorothy Dunn) had met Sprecher long before any labor trouble at the Boswell plant arose.

Dorothy Dunn also testified that she did not know Prior before the time she met him at the bus station in Corcoran on February 1, 1939 (R. 1670). However, she also testified that she introduced Mr. Sprecher and Prior to each other (R. 1672). Upon cross examination she denied having given any such testimony. (R. 1679).

She testified on direct examination that while talking with Mr. Prior at the Picket line on February 8, 1939, they talked about "the Boswell strike" (R. 1674). However, upon cross-examination she denied that anything was said about a "strike" and stated they were not talking about the strike. (R. 1679, 1680).

The entire lack of credibility of Mrs. Dunn's testimony is illustrated by the following instances (in addition to the other instances hereinabove referred to):

Mrs. Dunn testified on direct examination that she had a conversation with Mr. Glenn on each of the following dates to-wit, on or about February 16, 1939 (R. 2497-2500), one on Saturday morning of that same week, which would be February 18, 1939 (R. 2502), one on March 1, 1939 (R. 2506), and a telephone conversation on the morning of March 2, 1939 (R. 2507). However upon cross-examination, she testified that her second conversation was on March 1, she was positive

it was on March 1 (R. 2546). Upon again being asked to fix the date of the second conversation she again testified positively that it was March 1 (R. 2549). This testimony is substantiated by the testimony of Mr. Glenn, who testified that he talked with Mrs. Dunn about the middle of February 1939, when he went to her home and saw her at her request (R. 3255), and that the next time he talked with Mrs. Dunn regarding her work was March 1, 1939, which conversation was held at the telephone office. (R. 3258).

When asked upon cross-examination if she had heard about there being some disturbance at the Boswell plant in November 1938, she stated "I don't remember" (R. 2536), but finally admitted when pressed that she had heard the talk around town from time to time concerning the Boswell situation ever since it existed. (R. 2536, 2537).

On cross-examination, Mrs. Dunn was asked how long it was before she took the stand that morning that she last talked with anyone concerning her testimony in the case (R. 2549) and she replied, "Well, I don't know." She was then asked if she had gone over her testimony with Board's counsel, and was forced to admit that she had gone over the matter with one of the Board's attorneys the previous night (R. 2550).

On direct examination, Mrs. Dunn testified that it was during her conversation of February 16, 1939, with Mr. Glenn that leakage of information over the board was mentioned. (R. 2500, 2501), but on cross-examination she testified that the conversation during which complaints against her were discussed was the

conversation of March 1. (R. 2546-2548).

Glenn's explanation of the reasons for discharging Mrs. Dunn was not only reasonable but was in practically every material respect corroborated by facts testified to by other persons, including Mrs. Dunn herself, and the Board utterly failed to sustain its burden of proving by substantial evidence that her discharge was discriminatory. The evidence shows that Glenn had ample and justifiable causes for discharging her, and that such causes accumulated over a long period of time and had their inception long prior to the occasion of any labor trouble at the Boswell gin.

It is apparent that the immediate matter which prompted Mr. Glenn to discharge Mrs. Dunn on March 2nd was the fact that before talking with her on the morning of March 1st, he had been informed by both Mrs. Woodruff and her husband that even though Mrs. Woodruff had tried her best to do so she had found it impossible to get along harmoniously with Mrs. Dunn in the office and intended to resign. When Glenn thereafter on the morning of March 1st spoke to Mrs. Dunn regarding the dissension and informed her of Mrs. Woodruff's intention to resign because thereof, Mrs. Dunn assured him she would go and apologize to the other operators, and would make every effort to get along with them. However, when Mr. Glenn returned to the telephone office later in the day, and as he entered the door, Mrs. Dunn ran past him sobbing hysterically, and he found upon entering the office that the faces of the other operators were white and they were very much distraught, it was apparent that the dis-

sension had not ceased, despite Mrs. Dunn's promises. Glenn was then confronted with the necessity of either discharging Mrs. Dunn or losing the services of Mrs. Woodruff, who so far as shown by the evidence, was an efficient and satisfactory operator, with many years of service at the Exchange. Clearly the course subsequently pursued by him was justifiable and reasonable in view of Mrs. Dunn's physical condition, her habit of drinking wine while on duty, which was offensive to the other operators, the numerous complaints which had been registered by various subscribers over a period of one or two years regarding her services, and the continued dissension in the office.

The Board rests its entire case and the validity of its findings on its conjecture and suspicion that Mrs. Dunn was discharged because of alleged pressure brought upon Mr. Glenn by certain unidentified individuals to have her discharged, as the result of her daughters having gone to the picket line. The only testimony relative to alleged pressure upon Glenn to fire Mrs. Dunn consisted of rumors and hearsay some of which was three or four times removed. No direct evidence was offered in support of the charge or findings that the Exchange was guilty of an unfair labor practice in discharging Mrs. Dunn and the finding that pressure was brought to bear upon Glenn by various persons to secure her discharge was based solely upon this remote hearsay testimony.

In **N. L. R. B. v. Jones & Laughlin Steel Co.**, 301 U. S. 1, 81 L. ed. 893, 916, the Supreme Court stated the law as follows:

"The Act does not interfere with the normal exercise of the right of the employer to select its employees or to discharge them. The employer may not, under cover of that right, intimidate or coerce its employees with respect to their self-organization and representation, and, on the other hand, the Board is not entitled to make its authority a pretext for interference with the right of discharge when that right is exercised for other reasons than such intimidation and coercion"

The presumption is that the employer has not violated the law, and the burden of proof is upon the Board to show that the discharge was because of union activities. **N. L. R. B. v. Union Mfg. Co.**, 124 Fed. (2d) 332, 333, (C. C. A. 5, 1941).

In **N. L. R. B. v. Goshen Rubber & Manufacturing Co.**, 110 Fed. (2d) 432, the Court stated, page 436:

"It is well to remember that the National Labor Relations Act does not interfere with the normal right of the employer to select his employees or to discharge them, . . . ; that the burden of proof that an employee has been discriminatorily discharged is upon the complainant and the Board, **N.L.R.B. v. A. S. Abell Co.** that interference with the right of an employer to determine when an employee is inefficient should not be lightly indulged in when applying the Act"

In **Martel Mills v. N.L.R.B.**, 114 Fed. (2d) 624 (C.C.A. 4, 1940) the Court in discussing the employer's excuse for his delay in reinstating a discharged union employee, stated, page 631:

"If his explanation is a reasonable one, the onus is upon the Board to establish the falsity of this explanation and the truth of its own interpretation."

In **N.L.R.B. v. Vincennes Steel Corp.**, 117 Fed. (2d) 169, the Court held that where the employer discharges

an employee because in good faith he believes the employee is inefficient or physically incapacitated to perform his duties properly, such discharge is not discriminatory, even though the employer does not immediately discharge the employee after first acquiring such belief.

Where an employee has been discharged for cause and there is merely an implication that union activities might have been a factor, conjecture, suspicion, surmise, mistrust or guess-work alone are not sufficient to support a finding of discrimination. *N.L.R.B. v. Thompson Products Inc.* 97 Fed. (2d) 13, 17 (C.C.A. 6, 1938); *Cupples Co. v. N. L. R. B.* 106 Fed. (2d) 100, 118, (C. C. A. 8, 1939); *Burlington Dyeing & F. Co. v. N. L. R. B.*, 104 Fed. (2d) 736, 739 (C. C. A. 4, 1939); *Cudahy Packing Co. v. N. L. R. B.*, 116 Fed. (2d) 367, 371 (C. C. A. 8, 1940).

C. THE BOARD'S ORDER FOR REINSTATEMENT IS CONTRARY TO LAW

Although Mrs. Dunn personally signed and filed a charge against the Exchange with the Regional Office of the Board in San Francisco on March 14, 1939 (R. 1), this charge was never served on any of the respondents. The case went to hearing on the Fourth Amended charge signed by E. F. Prior, as business representative of the Federal, and filed with the Regional Office of the Board in Los Angeles on May 4, 1939. (R. 3).

There was not a scintilla of evidence, however, that she authorized Prior to sign or file the Fourth

Amended charge on her behalf, and before the introduction of any testimony at the hearing the respondents objected to the introduction in evidence of the charge signed by Mrs. Dunn on the ground that said charge had never been served upon any of the respondents; that the only charge served on any of the respondents concerning the Exchange or Mrs. Dunn was that contained in the Fourth Amended charge, a copy of which was served with the Amended Complaint issued May 6, 1939; that the Fourth Amended charge was made by E. F. Prior, as business representative of the Federal; that there was no showing or allegation that Mrs. Dunn was or intended to become a member of the Federal, or that she had engaged in any union activities, or had any connection whatsoever with any union; and that there was no authority shown or alleged for Prior to act in any respect for her in the filing of the Fourth Amended charge; and upon the further ground that her charge was incompetent and irrelevant. (R. 698-704).

The respondents at said time also objected to the admission in evidence of the Fourth Amended charge insofar as said charge concerned Mrs. Dunn and the Exchange, upon all of the grounds raised in connection with the admission in evidence of Mrs. Dunn's charge. (R. 704; 721; 725).

The Trial Examiner erroneously over-ruled all of the objections so interposed and admitted both of the charges in evidence, (R. 726), to which ruling the respondents excepted.

The respondents thereafter repeatedly through-

out the hearing interposed the same objections either by objecting to the introduction of testimony or by moving to strike testimony admitted over their objections. (R. 1666, 1667; 2664; 3324, 3325). The respondents also raised the same issues in their exceptions to the Intermediate Report. (R. 162, 163; 167-169; 170, 171; 174; 465; 1681, 1682).

The Trial Examiner consistently sustained objections to all questions intended to establish who was eligible to membership in the Federal. However, the Board itself found that the Federal admits to its membership employees of the Boswell Company. There was no evidence that Mrs. Dunn was eligible to membership in the Federal.

She testified and so did her husband that she was not a member of any labor organization, and in particular that she was not a member of any labor organization with which Prior was connected, and that she had never in any manner assisted or attempted to assist any such labor organizations. (R. 2571-2575).

The Board was without jurisdiction to entertain the Fourth Amended charge with respect to Mrs. Dunn, because there was no showing either that she had authorized Prior to file such charge or that she was a member of or assisting any organization of which Prior was a representative. In *N.L.R.B. v. Indiana & Michigan Electric Co.*, 124 Fed. (2d) 50 (C.C.A. 6, 1941), at page 57, the court stated:

"A labor organization filing a charge with the Board must have some direct connection with, or relationship to the employees of the employer of which complaint is made, and such organization

must be capable of acting as a bargaining representative of such employees if it should be so selected. Any other interpretation of the Act would admit intermeddlers, resulting in a diversion of the Act's purposes to private acts

"... it is clear that the Congress intended that only employees having a grievance because of unfair labor practices and labor organizations capable of acting as bargaining representatives could overcome statutory inertia of the Board to take jurisdiction of controversies arising pursuant to the statute."

No showing was made that there was any current labor dispute or labor organization at the Exchange, and on the contrary the evidence showed there was no such dispute or organization. When it is considered that there was no labor dispute at the Exchange, and that Mrs. Dunn was not a member of the Federal or any other labor organization and in fact was not even eligible for membership in the Federal, and that she had never assisted or attempted to assist the Federal or any other labor organization, it is clear that the Board utterly failed to make any showing that she came within the scope of the Act, or that she was in anywise entitled to or deprived of any of the rights conferred by the Act. Moreover, there was no evidence whatsoever showing or tending to show that she had attempted to or desired to exercise any of the rights mentioned in Section 7 of the Act, or that she was ever encouraged or discouraged from joining any labor organization. Neither was there any evidence which showed or tended to show that she was discharged for the purpose of discouraging membership in the Federal, as charged in

the amended complaint, or that her discharge had the effect of discouraging membership in the Federal, as found by the Board.

The courts have held that before reinstatement of a discharged employee can be ordered by the Board it must be shown not only that the employee was discriminatorily discharged, but also that the discharge was for the purpose of, and actually had the effect of, discouraging membership in a union. *N.L.R.B. v. Air Associates, Inc.* 121 Fed. (2d) 586, 592, (C.C.A. 2, 1941); *Stonewall Cotton Mills, Inc. v. N.L.R.B.* 129 Fed. (2d) 629, 632, (C. C. A. 5, 1942).

There was no evidence that Mrs. Dunn ever applied for reinstatement following her discharge on March 2, 1939. Nor is there any evidence that following her discharge she was replaced with a new employee. The fact that Mrs. Dunn was not replaced is alone sufficient ground for the court to deny enforcement of the Board's order for her reinstatement. In this respect we respectfully call the court's attention to the authorities hereinabove cited in connection with the Boswell Company's case.

The Board in its Brief (p. 38) cites cases to the effect that the discharge of a non-union employee because of a mistaken belief that he is sympathetic to or active in a union violates Section 8 (1) (3) of the Act; and the Board argues inferentially that Mrs. Dunn was discharged solely because of a mistaken belief on the part of Glenn that she was sympathetic to or active in the Federal. We submit, however, that there is not a scintilla of evidence in this case to support such

argument, or to show either that Mrs. Dunn was sympathetic to or active in any union, or that Glenn believed she was. As a matter of fact the evidence is all to the contrary. Mrs. Dunn's daughters were, according to the testimony of Dorothy Dunn, at the picket line upon only one occasion, namely February 8, 1939, and then the only purpose of her visit was to see Prior, who was the only one they talked with while there. Dorothy Dunn testified she never saw Prior after that date. The evidence shows that Mrs. Dunn herself was the first one to acquaint Glenn with the fact that the girls had gone to the picket line, and she explained to him the occasion for their visit which clearly had nothing whatever to do with the labor trouble at the Boswell plant or any of the activities of the Federal.

The Board also calls attention (Brief p. 39) to two cases which it claims support the general statement that the fact that the alleged union activity of an employee extends outside own employment is immaterial. The cases so cited are *Fort Wayne Corrugated Paper Co. v. N.L.R.B.* 111 F. (2d) 869, 874, and *N.L.R.B. v. Peter Caillier Kohler Swiss Chocolates Co.* 10 L.R.R. 742 (C.C.A. 2). An examination of these cases discloses, however, that the facts in each thereof were entirely dissimilar from the facts in the instant case, and that the rules of law laid down in each of said cases, although applying to the facts of the particular case, are clearly not applicable or controlling in the instant case.

In the **Corrugated Paper Company** case it appears that an employee named Markins was an active union employee of the respondent company, and that he also

served as chairman of the district union council, and in the latter capacity represented employees of a glass company which was one of the respondent's customers. Markins was called into the office of the general manager of the respondent and was told by him that the glass company had withdrawn its business because of Markins' union activities on behalf of the glass company's employees, and that Markins would have to cease such activities or be discharged. On the basis of this evidence the court upheld the findings by the Board that respondent had interfered with Markins in the exercise of rights guaranteed by Section 7 of the Act. The court at page 873 of its opinion states that the acts with respect to Markins involved the construction of Sections 8 and 9 of the Act granting an employee the "right to form, join, or assist labor organizations" and "to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection." The court then held that the Act would not be construed to protect union activities only in the inter-relationship between employees and employers of one company; however, the court also commented (p. 874) that an impartial observer might question the wisdom of an employee who acts to cause his employer's customers to cancel its orders and that such activities may be such as to invite the belief that the employee's case was one of exaggerated ego, in which case the employer would be justified in discharging such employee, and that in every case of such activity it is a factual controversy to determine whether or not a discharge for such activities is justified.

In the **Swiss Chocolate Company** case, the Board petitioned for enforcement of its order which included a direction for the reinstatement of one Whipple. It appears that respondent employer had a contract for the purchase of all surplus milk from the Dairymen's League, and that when the Dairy Farmers Union which supplied the League with milk declared a strike against the League, respondent employer helped to defeat the strike. It further appears that the "P.C.K.", a union of respondent's employees, of which Whipple was the president, adopted a resolution condemning respondent employer for such aid, and that such resolution was published in the papers, and that respondent employer feeling it was injurious to his business discharged Whipple. Respondent employer contended before the court that the Act was designed to protect only "employees" and that, since the Dairy Farmers' Union was not made up of employees but of farmers Section 7 did not sanction P.C.K.'s action in support of the Farmers' Union. The court directed that the order, including the portion relating to the reinstatement of Whipple be enforced, saying that while it was true that only those employees defined by Section 2 (3) of the Act can invoke Section 7 of the Act, and that therefore members of the Farmers' Union could not invoke Section 7, it followed that so far as the resolution adopted by P.C.K. was a "concerted activity" for the "mutual aid and protection" of the farmers on the one hand and the members of P.C.K. on the other, the section did not cover it. However, so far as the resolution was a "concerted activity for the purpose" of

the "mutual aid and protection" of the members of the P.C.K. themselves, the section did cover it. The court found that the action by P.C.K. in adopting and publishing its resolution was intended for its own benefit in that it secured to them the support of the Farmers' Union which might prove an important factor in future disputes with the respondent company.

It is apparent that the distinguishing features in each of the cases cited by the Board are (1) that in each of said cases the employees of the respondent, as well as those of the other employer concerned, were each organized; and (2) that the employees of the respondent company who were discriminated against were in each instance active in furthering and supporting the activities of the organized employees of the other employer, and a benefit either direct or indirectly would or could result to the union members of the respondent company.

In the instant case, however, the uncontradicted evidence showed, as previously stated, (1) that there was no union organization at the Exchange; (2) that Mrs. Dunn never assisted or attempted to assist the Federal in any way; and (3) that even though she had assisted or attempted to assist the Federal, neither she nor any of the employees of the Exchange would or could possibly derive any benefit from such activity. It is clear in this case that (1) Mrs. Dunn was not an employee within the definition of the Act; (2) that her discharge did not and could not have either the purpose or the effect of discouraging membership in the Federal or in any other labor organization; and (3)

that her discharge did not and could not lead to any labor dispute or in anywise burden, obstruct or interfere with interstate commerce.

IV.

RESPONDENTS WERE NOT AFFORDED A FAIR AND IMPARTIAL HEARING

Both of the respondents in this case duly excepted before the Board to the manner in which the hearing was conducted by the Trial Examiner (R. 175). The record shows that the hearing was not conducted in a fair and impartial manner, but on the contrary the Trial Examiner throughout the entire hearing showed marked bias and prejudice in favor of the Federal and Board's counsel and case, and against respondents and their counsel and case.

(a) Throughout the entire hearing the Trial Examiner displayed animosity toward counsel for respondents and frequently and repeatedly during the course of the hearing became angry with and argued with respondents' counsel, and several times threatened to bar such counsel from further participation in the hearing, without any reason, cause or justification whatsoever for such conduct or acts on the part of the Trial Examiner.

Space does not permit our setting forth in detail all the portions of the record which show the attitude and conduct of the Trial Examiner in this respect or quoting the record. A few examples of the conduct referred to in the foregoing paragraphs are shown by

the proceedings which appear in the following portions of the record to which we respectfully call the court's attention:

Examination of Glenn (R. 3231-3236);

Cross-examination of Powell (R. 1299-1303);

Cross-examination of Farr (R. 1065-1068; 1081-1084);

Cross-examination of Prior (R. 1115-1117; 1141-1143; 1146-1149);

Cross-examination of Spear (R. 1551-1553; 1580-1583);

Cross-examination of Griffin (R. 1907-1909); and

Recross-examination of Mrs. Dunn (R. 2573, 2574).

(b) The Trial Examiner showed a hostile attitude toward witnesses called by respondents, and a friendly attitude toward witnesses called by the Board. In numerous instances he cross-examined and argued with witnesses called by respondents; however, he rarely examined the witnesses called by the Board, and when he did his examination was in the nature of a friendly and leading examination.

For example, after E. C. Powell, one of the witnesses called by the Board, had been thoroughly impeached and discredited, the Trial Examiner attempted, by leading and suggestive questions, to rehabilitate him. One of the respects in which Powell had been impeached was his admission that he had been convicted of a felony for which he had been imprisoned as one of the conditions of probation. He testified to certain details of his conviction directly contrary to the official reporter's transcript in the criminal proceeding

in question (R. 2947; Boswell's Exhibit No. 21). After he was impeached by the official reporter's transcript in that proceeding, the Trial Examiner endeavored by leading questions to elicit testimony from Powell to the effect that he had been improperly and unfairly treated and convicted, and had not been advised of his legal rights, when, in fact, the official reporter's transcript in that proceeding showed conclusively that he had been properly informed of his rights and fairly and properly tried and convicted (R. 1324-1329; 1340-1345).

Another instance when the Trial Examiner questioned one of the Board's witnesses for the obvious purpose of endeavoring to fortify the Board's case, was during the testimony of Johnston (R. 975-977).

Some of the examples of the numerous instances of hostile cross-examination of, and arguments with, witnesses called by respondents are the following:

C. H. Glenn (R. 2493-2495)—This witness was first called by the Board for the purpose of endeavoring to establish jurisdictional facts with respect to the Exchange. After Board's counsel finished examining the witness, the Trial Examiner took over the witness and endeavored to elicit additional jurisdictional facts.

Blakely G. Crary (R. 3307)—After this witness for the Exchange had been fully examined by all counsel, the Trial Examiner endeavored by further cross-examination to discredit his previous testimony.

James W. Woodruff (R. 3320-3322)—After the examination of this witness for the Exchange had been completed by all counsel, the Trial Examiner took over

the examination, and over the objections of respondents endeavored to discredit the witness's previous testimony.

Louis T. Robinson (R. 2814; 2905-2911)—While this witness for Boswell Company was being cross-examined by counsel for the Board and was being asked a number of vague questions, which the witness obviously did not and could not understand, the Trial Examiner not only argued with the witness, but instructed him to answer the questions without giving him any opportunity to have the meaning of the questions explained or to give his answer. This is in direct contrast with the friendly attitude of the Trial Examiner toward Mrs. Dunn. While she was being cross-examined for the purpose of impeachment and hesitated in her answer to perfectly clear questions the Trial Examiner instructed her to just take her time. (R. 2549).

James W. Hubbard (R. 2287, 2288)—The Trial Examiner took over the examination of this witness and endeavored to fortify the Board's case by trying to establish that the witness occupied a supervisory capacity with Boswell Company.

John A. Case (R. 2717, 2718)—This witness for the Boswell Company was examined by the Trial Examiner after all examination by counsel had been completed, and the Trial Examiner endeavored to fortify the Board's alleged case against the Boswell Company.

Roger R. Walch (R. 935-937)—After the examination of this witness for the Boswell Company was completed by all counsel the Trial Examiner endeavored

by examining the witness to discredit his previous testimony.

Samuel Brenes was called as a witness by the Board in connection with the Association phase of the case. After his examination and cross-examination had been completed by all counsel the Trial Examiner took over the witness and endeavored to establish that he was the senior bookkeeper in the Boswell Company's local office (R. 2453). The testimony so elicited by the Trial Examiner is the principal basis of the Board's findings that Brenes is an alleged supervisory employee—an employee who is closer to the management than he is to the rank and file of the employees. (R. 572-579).

(c) The Trial Examiner repeatedly during the hearing made statements off the record, which properly belonged therein. In several instances such statements were made over the objection of respondents. During the numerous off the record discussions which took place at the order of the Trial Examiner he made statements which clearly revealed his bias and his animosity toward respondents, and severely criticized counsel for respondents without any cause therefor. In at least one instance, his ruling upon an objection was made during one of these off the record discussions, and such ruling does not appear in the transcript. (R. 972-975). Also during some of these off the record discussions the Trial Examiner became angry with counsel for respondents, so that the true nature of the proceedings and the

actual attitude of the Examiner is not correctly shown by the record.

(d) The Trial Examiner in his rulings upon motions and objections to admissibility of evidence improperly and unfairly favored Board's counsel and case and consistently ruled improperly and unfairly against the respondents and their respective counsel and cases.

(e) E. F. Prior, business representative of the Federal was present throughout practically the entire hearing and although he was not an attorney in the proceeding, he was permitted by the Trial Examiner to sit, and did sit, at the table of Board's counsel and from his actions and conduct it was apparent that he was aiding and assisting Board's counsel in the presentation of the Board's case against respondents. Upon numerous occasions during the hearing the Trial Examiner requested all counsel to come to his bench so he could discuss certain matters with them off the record and on such occasions Prior, although he was a witness for the Board and was not counsel for any of the parties to the proceedings, always went forward and was permitted by the Trial Examiner to participate in such discussions at the bench.

(f) In addition to the matters above specified, the Trial Examiner's prejudice toward respondents is displayed by the partial nature of his Intermediate Report. The Report is replete with exaggerations and misstatements of the evidence—all to the disadvantage of respondents. The Intermediate Report is not in any respect a fair statement of the testimony which

was adduced at the hearing as was clearly shown and demonstrated in the numerous exceptions taken by respondents to that Report. (R. 160-497).

Such conduct as was displayed by the Trial Examiner in this case has been held to be improper in the following cases:

Inland Steel Company v. N. L. R. B. 109 Fed. (2d) 9, 13 (C. C. A. 7, 1940)

Montgomery Ward & Co., v. N. L. R. B. 103 Fed. (2d) 147, 149 (C. C. A. 8, 1939)

N. L. R. B. v. Washington Dehydrated Food Co., 118 Fed. (2d) 980, 982 (C. C. A. 9, 1941)

N. L. R. B. v. Ford Motor Company, 114 Fed. (2d) 905, 909 (C. C. A. 6, 1940)

V.

THE TRIAL EXAMINER ERRED IN HIS RULINGS ON ADMISSIBILITY OF EVIDENCE.

The respondents, both at the time of the hearing and in their statement of exceptions to the Intermediate Report, duly excepted to each and every adverse ruling made by the Trial Examiner on matters relating to the admissibility of evidence and the granting of motions to strike, the great majority of which rulings were clearly erroneous.

The Trial Examiner throughout the hearing permitted the introduction of hearsay testimony by the Board's witnesses, some of which was as much as three or four times removed, over the repeated objections of respondents. In particular the respondents objected and excepted to all testimony relating to conversations

alleged to have occurred between the complaining Federal members, or any of them, and any and all of the alleged supervisory employees of the Boswell Company, upon the ground that such testimony was hearsay and that there was no evidence showing or tending to show any authority was conferred by any of the respondents upon any of the alleged supervisory employees to speak or act for or on behalf of the respondents.

All of the findings in the Intermediate Report based upon such hearsay testimony were duly excepted to upon the same grounds which were urged in support of respondents' objections to the admissibility of such testimony, and upon the ground that all such portions of said findings were unsupported by any competent or credible evidence. (R. 160; 224-229).

Respondents also objected to all testimony given by Dorothy Dunn upon the ground that the Board had no jurisdiction over the Exchange; that the charge filed by Mrs. Dunn had never been served upon any of the respondents; that there was no authority shown or connection between Mrs. Dunn and Prior for the filing of the charge signed and filed by him; that her testimony related to matters and conversations which occurred entirely outside the presence of any of the respondents, and all of which conversations were not in anywise connected with anyone authorized to represent, speak for or bind the respondents and were hearsay and incompetent, irrelevant and immaterial. (R. 1666-1676). Respondents also moved to strike her in-

competent hearsay testimony, and the motions were denied. (R. 1681, 1682).

The respondents also objected to all of Mrs. Dunn's testimony regarding alleged conversations with various parties other than Glenn, upon the ground that it was hearsay and not binding on any of the respondents, there being no connection at all shown between the respondents and any of these various persons. (R. 2498, 2499; 2509; 2514-2518; 2521; 2523; 2525; 2527). When the Trial Examiner overruled these objections the respondents duly excepted thereto, both at the hearing and before the Board. (R. 409-416).

Lack of time and space precludes any detailed discussion or specification of the numerous erroneous rulings. Some of these rulings have been previously mentioned in this Brief, and all of them are particularly specified and set forth in the exceptions to the Intermediate Report (R. 160-497).

We will, however, call the court's attention to a few other specific instances in which the Trial Examiner clearly erred in his rulings, to the prejudice of respondents.

Although the Trial Examiner permitted counsel for the Board to introduce hearsay testimony relating to activities taking place at Federal meetings in the absence of the respondents, he consistently refused to permit respondents to establish the identity of persons present when these activities were alleged to have occurred. The complaint alleged that respondent Boswell Company was guilty of unfair labor practices in discharging and discriminating against persons solely

because of their union activities and membership. In spite of this fact, the Trial Examiner refused to permit respondents to elicit information regarding the identity of Federal members in order to show that members of Prior's union who desired employment were still employed without any discrimination. These erroneous rulings of the Trial Examiner are discussed in Exception No. 218, of Exceptions (R. 457-463), and are found in the record at pages 842, 843; 846-849; 1073; 1076; 1106-1107; 1235, 1236; 1588; 1721; 2237-2239. Such rulings have been held to be erroneous in the case of **Montgomery Ward & Co. v. N. L. R. B.**, *supra*, at page 156 of the decision.

One aggravated instance among the many erroneous rulings of the Trial Examiner was his refusal to require the production of a sworn statement by Prior contained in the charge filed by him on July 17, 1938, which related to some of the matters here in question. In view of the fact that Prior had testified regarding this charge on direct examination, and in view of the fact that a similar charge filed by Mrs. Dunn was introduced by the Board, this ruling of the Trial Examiner constituted a clear refusal on his part to allow the respondents the same latitude as he gave to the Board. The charge in question was without doubt competent for the purpose of impeachment in comparing the former sworn statement of a witness with his testimony on the stand. These particular rulings of the Trial Examiner are discussed in Exception No. 219 of Exceptions (R. 463), and appear in the record at pages 1101-1104 and 1110, 1111.

VI.

**THE BOARD'S ORDER IS INVALID
AND IMPROPER**

The order made by the Board is invalid and improper in the following respects and for the following reasons:

(1) The findings, as hereinabove pointed out, are not supported by substantial evidence and in many respects are contrary to the evidence and therefore do not support the Board's conclusions or order.

(2) The blanket provision in the cease and desist order whereby each of the respondents was restrained from **"in any other manner"** interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join or assist labor organizations, **to bargain collectively** through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection as guaranteed in Section 7 of the Act (R. 617, 620) is clearly erroneous and invalid under the facts of this case.

There was no evidence that the alleged unfair labor practices complained of have been so persistent and varied as to justify an apprehension of continued similar and varied efforts in the future to interfere with the employees' right of self-organization and collective bargaining. It has been held in many cases that unless the alleged violations have been persistent and similar violations will likely be committed in the future a blanket provision such as that contained in

the Board's order in the instant case is improper and illegal. *N. L. R. B. v. Express Publishing Co.*, 312 U. S. 426; *Press Co. Inc., v. N. L. R. B.* (Ct. App. D. C. No. 7482, 1941); *N. L. R. B. v. Newark Morning Ledger Co.*, 120 Fed. (2d) 262, 269 (C. C. A. 3, 1941); *N. L. R. B. v. West Texas Utilities*, 119 Fed. (2d) 683, 686 (C. C. A. 5, 1941); *McQuay-Norris Mfg. Co., v. N. L. R. B.*, 119 Fed. (2d) 1009, 1010 (C. C. A. 7, 1941); *N. L. R. B. v. Swift & Co.*, 129 Fed. (2d) 222, (C. C. A. 8, 1942).

Moreover the Board neither charged nor found that either of the respondents violated Section 8 (5) of the Act. This court in *N. L. R. B. v. Pacific Gas & Electric Co.*, 118 Fed. (2d) 780, 789 (C. C. A. 9, 1941), modified the Board's cease and desist order by striking therefrom the blanket provision with respect to collective bargaining because no violation of Section 8 (5) had been found.

(3) The Board claims in its Brief (p. 41) that the affirmative provision of the order requiring the Boswell Company to afford its employees reasonable protection in its plant is necessary to prevent physical interruption of their work and physical assaults or threats thereof directed at discouraging union membership. The record shows, however, as previously pointed out, that no special protection was or is required in this regard, as Joe Briley and a number of other Federal members continued to work at the plant without interruption or hindrance following the episode of November 18, 1938.

(4) We have previously pointed out that the

provision in the Board's order requiring Boswell Company to refuse to recognize or deal with the Association is tantamount to an order that the Association be disestablished; that the evidence does not support the Board's findings that the Association is Company dominated or controlled; and that the Association not having been made a party to the proceedings and not having intervened therein, the Board exceeded its authority in making its order in respect to the Association.

(5) We have also previously pointed out that the Board's order that certain former employees be placed on a preferential hiring list is improper and invalid, both because the Boswell Company, as shown by the evidence, did not violate the Act and was not hostile toward the Federal and its members. Furthermore the undisputed evidence shows that a number of the Federal members were re-employed after November 18, 1938, when work was available and they applied for employment.

6. The evidence in this case shows, as previously pointed out, that a number of the Federal members engaged in the picketing of the Boswell plant subsequent to January 23, 1939. The Federal did not institute any strike, and it is apparent that the Federal members who were participating in the picketing activities were not making any effort to find other employment. The Board claims (Brief, p. 44) that respondents are precluded from raising any issue in this enforcement proceeding regarding the Board's failure to find on the matter of what efforts, if any, the employees who were

allegedly discriminated against and discharged have made to secure other and substantially equivalent employment since the termination of their employment with the respective respondents, because this point was not urged by respondents before the Board. The Board contends that the question of potential employment is an affirmative defense which must be put in issue by the respondents, and is not a part of the Board's case. In support of these contentions the Board cites the case of **Phelps Dodge Corp. v. N. L. R. B.**, 313 U. S. 177 and a number of other decisions. We fail to find any language in the **Phelps Dodge** case or in any of the other cases cited by the Board which so holds. There are a number of cases decided after the **Phelps Dodge** decision which clearly hold that the issue of potential earnings is properly raised in connection with the enforcement proceeding, and that the proper procedure for the court when the issue is raised is to remand the question of potential earnings to the Board for further consideration and the production of evidence on that point, and not leave the matter for determination in contempt proceedings. **N. L. R. B. v. Suburban Lumber Co.**, 121 Fed. (2d) 829, 834 (C.C.A. 3, June 30, 1941); **N. L. R. B. v. Newberry Lumber & Chemical Co.**, 123 Fed. (2d) 831, 839 (C.C.A. 6, December 12, 1941); **Corning Glass Works v. N. L. R. B.**, 129 Fed. (2d) 969, (C. C. A. 2, July 11, 1942).

7. Respondents are not unmindful of the fact that the Act contains no time-limit mandate to the Board for the rendering of its decisions, and that generally speaking a defense of laches is not available no

matter how long the Board delays its decision unless such delay is wilful or capricious. Manifestly the respondents are placed at a distinct disadvantage, and it is difficult if not impossible for them to establish wilfulness or capriciousness on the part of the Board. In the instant case the original charge against the Boswell Company was filed November 21, 1938 and various amended charges were subsequently filed, and on March 4, 1939 a complaint was issued and the case was set for hearing on March 13, 1939. However, the Board for some unexplained reason did not proceed with the hearing on the date set, but indefinitely continued the same, and the case did not go to hearing until May 18, 1939. The Trial Examiner delayed issuing his intermediate report until January 11, 1940, and said report was not served upon the respondents until January 25, 1940, and the Board did not issue its Decision and Order until September 29, 1941. All of this delay was clearly chargeable to the Board with the exception of a period of approximately thirty days additional time which was granted the respondents within which to file their statement of exceptions and brief. Respondents are not in a position to refute the Board's contention that the delay of approximately two years and four months in deciding the case after it was heard is due to the congestion of the Board's docket. Obviously, however, the effect of this long delay will be extremely prejudicial to each of the respondents should the court uphold the Board's order for reinstatement of certain employees with back pay, and it can logically be presumed that the Board may possibly

have delayed its decision in this case in favor of other cases of greater importance to the Board.

8. Should the court enforce the Board's order for reinstatement of certain of the Boswell Company's employees, it would be extremely difficult, if not impossible, to determine the amount of wages each would have earned had he remained at the plant, in view of the seasonal nature of the Company's operations, and the undisputed and uncontradicted evidence which showed that there was a very substantial normal reduction in the amount of employment and in the number of employees at the plant after the date of termination of employment of each of said employees.

CONCLUSION

It is respectfully submitted:

1. This case should be dismissed as to both respondents on the ground that neither of the respondents is subject to the Act, and that the Board has not and never had jurisdiction.

2. The findings and conclusions of the Board and its orders based thereon are not supported by any substantial evidence as required in cases of this nature, but are based upon hearsay, surmise and suspicion only, and should be vacated and set aside with remand to the Board for further hearing, or the court should substitute for the findings and decision of the Board its own findings and decision which may appropriate-

ly be made upon the record now before the court.

3. It appears by the evidence which has been called to the attention of the court that respondents were each denied a fair and impartial hearing, and each of the respondents was thereby denied due process of law, and the order with respect to each of the respondents should be vacated with remand to the Board for re-hearing, if the case is not dismissed, as it should be on the jurisdictional and other grounds specified in this brief.

Dated: Hanford, California, November 20, 1942.

Respectfully submitted,

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No. 10148

**In the United States Circuit Court of Appeals
for the Ninth Circuit**

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

J. G. BOSWELL COMPANY AND CORCORAN TELEPHONE
EXCHANGE, RESPONDENTS

ON PETITION FOR ENFORCEMENT OF AN ORDER OF THE
NATIONAL LABOR RELATIONS BOARD

REPLY BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

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In the United States Circuit Court of Appeals for the Ninth Circuit

No. 10148

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

J. G. BOSWELL COMPANY AND CORCORAN TELEPHONE
EXCHANGE, RESPONDENTS

*ON PETITION FOR ENFORCEMENT OF AN ORDER OF THE
NATIONAL LABOR RELATIONS BOARD*

REPLY BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

This reply brief is submitted in response to the few new matters raised in respondents' voluminous brief. Before considering the specific contentions, however, it should be pointed out that respondents, in complete disregard of the Board's findings on controversial issues of fact, have set forth in their brief a weighted narrative of the evidence with a plea that this Court "pass upon the credibility of witnesses and the weight * * * of their testimony" (Br., p. 209). The Board has carefully considered and weighed all the evidence, and whether the Board in so doing should have believed respondents' witnesses and rejected all contrary evidence, as respondents contend, is, of course, not within the scope of this review. We now turn to a consideration of specific contentions made by respondents.

1. The contention that the Board's order is unenforceable as to Powell because of his criminal record

Respondent Boswell Company contends (Br. pp. 158-159) that it should not be required to reinstate Powell, even though he may have been discriminatorily discharged, because of his conviction for two felonies prior to his discharge. The record however shows that Powell's criminal record "was common knowledge among the people here, and everybody in the county knew about" it (R. 3195). In fact respondent Boswell was well aware of it as early as the spring of 1938 (R. 3194-3196); yet it chose to retain him in its employ until the evictions in November 1938. Under these circumstances, respondent cannot in good faith now urge Powell's earlier misconduct as a basis for its refusal to reinstate him. *Stewart Die Casting Corp. v. N. L. R. B.*, 114 F. (2d) 849, 855-856 (C. C. A. 7), cert. den. 312 U. S. 680; *N. L. R. B. v. Gamble Robinson Co.*, 129 F. (2d) 588, 592 (C. C. A. 8).

2. The contention that the Association was not a party to the proceedings

Respondent Boswell contends (R. 180-181) that the Board's order with respect to the Association is invalid because it was not a party to the proceeding and did not appear therein. This contention is erroneous both in fact and in law. The Association was duly served with the fourth amended charge, the complaint, and the notice of hearing (R. 28-29, 500-501), but did not desire to intervene or be represented by counsel (R. 695). Having received due notice and an opportunity to be heard, the Association was accorded all

the rights to which this Court stated it was entitled. *N. L. R. B. v. Sterling Electric Motors*, 109 F. (2d) 194, 210 (C. C. A. 9). Moreover, the Association was not a necessary party to the validity of the Board's order. *National Licorice Co. v. N. L. R. B.*, 309 U. S. 350, 361-365; *N. L. R. B. v. Indiana & Michigan Electric Co.*, 124 F. (2d) 50, 54 (C. C. A. 6).

3. The contention that the Board had no jurisdiction to entertain the charge with respect to Mrs. Dunn

Respondent Exchange contends (pp. 233-237) that the Board had no jurisdiction to consider Mrs. Dunn's case because it did not appear that she authorized Organizer Prior to file a charge on her behalf or was a member of any labor organization with which Prior was connected. This contention is plainly without merit, as the Board found (R. 504, n. 4).

Section 10 (b) of the Act, which provides for the filing of charges, while it makes such filing a jurisdictional requirement,¹ is otherwise wholly without limitation.² The Board's Rules and Regulations (Article II, Section 1) accordingly provide that charges may be filed "by any person or labor organization." These rules have been uniformly interpreted by the Board so as not to restrict the class of persons or organizations qualified to file charges. *Matter of Penn-*

¹ *N. L. R. B. v. Hopwood Retinning Co.*, 98 F. (2d) 97, 101 (C. C. A. 2); *National Licorice Co. v. N. L. R. B.*, 309 U. S. 350, 369.

² Section 10 (b) provides as follows:

Whenever it is charged that any person has engaged in or is engaging in any * * * unfair labor practice, the Board * * * shall have power to issue * * * a complaint * * *.

sylvania Greyhound Lines, Inc., 1 N. L. R. B. 1, 45 (1935), Board's order enforced, 303 U. S. 261, 272; *Matter of Superior Tanning Co.*, 14 N. L. R. B. 942, 945 (1939) (Board's order enforced with modification, 117 F. (2d) 881, 883 (C. C. A. 7), cert. denied 313 U. S. 559); *Matter of Jefferson Lake Oil Co., Inc.*, 16 N. L. R. B. 355, 356 (1939); cf. *Matter of Vincennes Steel Corp.*, 17 N. L. R. B. 825, 826-827 (1939) (Board's order enforced with modification, 117 F. (2d) 169, 170-171 (C. C. A. 7)); *Matter of Inland Lime & Stone Co.*, 24 N. L. R. B. 758, 759 (1940) (Board's order enforced, 119 F. (2d) 20 (C. C. A. 7)). The validity of the Board's practice in this respect was vigorously contested in the *Pennsylvania Greyhound* case, *supra*, where, as here, the employer contended that the proceedings were defective because the charging party allegedly had no interest in the proceedings (Employer's Brief, pp. 2-8). The Government asserted, to the contrary, that the Board's jurisdiction was not affected by the extent or the existence of the charging party's interest in the proceeding (Government's Brief, 53-55). The Supreme Court enforced the Board's order; without specifically referring to this issue, it stated that "we have considered but find it unnecessary to comment upon other objections to the order of less moment" (303 U. S. at p. 272).

Respondent places its sole reliance on the decision of the Sixth Circuit Court of Appeals in *N. L. R. B. v. Indiana & Michigan Electric Co.*, 124 F. (2d) 50. We submit that that decision is not consonant with

the Act or the foregoing authorities. The Government's petition for certiorari to reverse that holding has been granted (316 U. S. 657), and the case was argued and submitted to the Supreme Court on November 13 and 16, 1942, where it is now pending decision.

4. The contention that respondents were not afforded a fair and impartial hearing

Respondents' contention (Br. pp. 242-248) that the Trial Examiner was biased and prejudiced and conducted the hearing in an unfair and impartial manner, is wholly lacking in merit. Specifically, respondents complain that the Trial Examiner (a) "displayed animosity" toward, and "threatened to bar," respondents' counsel from further participation in the hearing "without any reason, cause or justification" (Br. p. 242-243), (b) showed a hostile attitude toward respondents' witnesses and cross-examined them (Br. pp. 243-246), (c) made improper off-the-record statements (Br. p. 246), (d) favored the Board's attorney in ruling on motions and admissibility of evidence (Br. p. 247), (e) permitted the Union organizer to sit at the table with Board's counsel and participate in the proceedings (Br. p. 247), and (f) was prejudiced in finding against respondents in the intermediate report (Br. pp. 247-248). All these claims are without basis.

(a) The record plainly indicates that the Trial Examiner at all times endeavored to conduct the hearing in an orderly and impartial manner but was prevented from so doing by respondents' counsel, who assumed improper liberties and completely disregarded

the usual and ordinary rules of conduct and procedure. The constant interruptions by and arguments of respondents' counsel, not only toward witnesses but also with respect to the Board's counsel and the Trial Examiner,³ and other plainly improper actions,⁴ evoked a few manifestly justified protests on the part of the Board's counsel and the Trial Examiner (e. g. 857, 1082-1084, 1115-1117, 1141-1143, 1146-1149, 1220-1221, 1299-1302, 1417-1419, 1454, 1476-1478, 1551-1553, 1580-1583, 1887-1888, 2472, 2733-2734, 2763, 2743-2744, 2791-2793, 3231-3236), to some of which the respondents now object. During the hearing, counsel for respondents frequently recognized the justice of such protests by offering to "keep still" (R. 2472), by admitting that they had engaged in interruptions (R. 2505, 2928), and by apologizing on several occasions, once "for losing my temper" (R. 3234, 2537, 774, 1434).

³ See, e. g., R. 701, 702, 710, 767, 770, 808, 814, 823, 827, 832, 834, 836, 841, 843, 848, 879, 881, 889, 891, 900, 945, 989, 990, 996, 999, 1000, 1006, 1014, 1061, 1065, 1071, 1081-1084, 1115-1117, 1120, 1143, 1146-1149, 1186, 1208, 1214, 1219, 1220, 1248, 1268, 1271, 1283, 1299-1303, 1323, 1348, 1374, 1380, 1394, 1418, 1425, 1430, 1440, 1449, 1450, 1469, 1511, 1551-1553, 1563, 1573, 1580-1583, 1604, 1613, 1651, 1705, 1726, 1729, 1750, 1787, 1845, 1868, 1874, 1879, 1881, 1885, 1887-1888, 1891, 1896, 1901, 1912, 1916, 1968, 1989, 2012, 2071, 2139, 2141, 2166-2167, 2180, 2195, 2202, 2249, 2269, 2294, 2348, 2370, 2404, 2472, 2475, 2499, 2503, 2504, 2510, 2518, 2520, 2523, 2541, 2540, 2598, 2683, 2687, 2693, 2698, 2701, 2719, 2733-2734, 2739, 2754, 2763, 2790, 2791-2793, 2800, 2802, 2820, 2834, 2874, 2913, 2914, 2918, 2925, 2928, 2931, 2939, 3059, 3137, 3177, 3180, 3231-3236.

⁴ See, e. g., R. 1068, 1082, 1083, 1107-1108, 1115-1117, 1141-1143, 1149, 1122, 1283-1287, 1299, 1402, 1403, 1419, 1428, 1553, 1771, 2003-2006, 2405, 2406-2408, 2433, 2444, 2535, 2536, 2693, 2716, 2733, 2734, 2748-2749, 2763, 2766, 2767, 2777, 2844, 2902, 2906, 3137, 3138.

As the Third Circuit Court of Appeals stated in a similar situation in *N. L. R. B. v. Baldwin Locomotive Works*, 128 F. (2d) 39, 45 (C. C. A. 3), "the offender against due and orderly trial procedure was in reality respondent's trial attorney, whose apparent desire from the outset of the hearing was to goad the examiner into unjudicial words or conduct. * * * the examiner none the less exercised commendable restraint under the aggravating circumstances and proceeded with the hearing fairly and impartially to the conclusion thereof." See also *Bethlehem Steel Co. v. N. L. R. B.*, 120 F. (2d) 641 (App. D. C.).

(b) Respondents' contention that the Trial Examiner was hostile toward their witnesses and friendly toward the Board's witnesses, is neither borne out by the record as a whole nor by the specific instances mentioned in respondents' brief (Br. pp. 243-246).⁵ The limited extent to which the Trial Examiner questioned the witnesses in this case was eminently proper and is not subject to criticism for any reason. Respondents' further assertion that in several instances the Trial Examiner questioned witnesses "for the obvious purpose of endeavoring to fortify" the

⁵ "It is the function of an examiner, just as it is the recognized function of a trial judge, to see that facts are clearly and fully developed. He is not required to sit idly by and permit a confused or meaningless record to be made." *Bethlehem Steel Co. v. N. L. R. B.*, 120 F. (2d) 641 (App. D. C.); *N. L. R. B. v. Condenser Corp. of America*, 128 F. (2d) 67, 70 (C. C. A. 3); *N. L. R. B. v. Remington Rand, Inc.*, 94 F. (2d) 862, 873 (C. C. A. 2), cert. den., 304 U. S. 576; *Jefferson Electric Co. v. N. L. R. B.*, 102 F. (2d) 949, 954-955 (C. C. A. 7); *Subin v. N. L. R. B.*, 112 F. (2d) 326, 332 (C. C. A. 3), cert. den., 311 U. S. 673; *Cupples Co., Mfrs. v. N. L. R. B.*, 106 F. (2d) 100, 113 (C. C. A. 8).

Board's case, and to "discredit" the witness or his testimony (Br. pp. 244-246), ~~are~~^{is} wholly unsupported by the record references cited.

(c) Although respondents now object to all the off-the-record discussions (R. 246-247), only in two instances during the hearing did they request that such discussion be held on the record, one of which was granted (R. 860, 2241). In no instance following an off-the-record discussion did respondents' counsel object to any statements made off the record; nor did they seek at any time to restate on the record the substance of the off-the-record discussions, although these courses were always open to them (R. 695, 765, 766, 770, 772, 773, 815, 839, 881, 882, 949, 974, 1015, 1131, 1286, 1292, 1358, 1454, 1579, 1682, 1803, 1808, 1828, 1837, 1859, 2006, 2157, 2267, 2401, 2429, 2455, 2649, 2801, 2815, 2829, 2907, 3049, 3062, 3071, 3089, 3094, 3097, 3128, 3194, 3211, 3217, 3224, 3327, 3334).⁶ Indeed, respondents themselves affirmatively approved or requested off-the-record discussions in several instances (R. 1828, 1837, 2815). Respondents offer no evidentiary support for their bland assertions that during such off-the-record discussions the Trial Examiner "made statements which clearly revealed his bias and animosity toward respondents, and se-

⁶ That respondents did not hesitate to assert their view of the proper content of the record is amply demonstrated by their constant and proper requests for correction of the record, which the Trial Examiner facilitated and granted. See, e. g., R. 1276-1278, 1396-1397, 2456-2458, 2751-2753, 3043-3049, 3127-3132, 3200-3201, 3130-3132, 3214-3219, 3337-3340.

verely criticized counsel for the respondents without any cause therefore" and "became angry with counsel for the respondents." ⁷

(d) The Court "need not consider" respondents' bald assertion that the Trial Examiner improperly favored the Board in his rulings on motions and objections to admissibility of evidence, "for the reason that [respondents do] not point to any single instance in the record supporting the assertion" *North Whittier Heights Citrus Ass'n v. N. L. R. B.*, 109 F. (2d) 76, 83 (C. C. A. 9).⁸ Moreover, the Trial Examiner repeatedly accommodated respondents and in various ways sought to facilitate the presentation of their cases (see, e. g., R. 1523, 761, 838, 841, 844-845, 880, 902, 943,

⁷ Although respondents state that in at least one instance the Trial Examiner ruled on a motion during an off-the-record discussion, there is nothing to indicate that this occurred (R. 972-975). It is true that a motion was made and the discussion followed. However, it is a more reasonable assumption from the face of the record that respondents' counsel withdrew his question, as he did in numerous other instances (see, e. g., R. 1053, 1058, 1059, 1061, 1063, 1077, 1099, 1109, 1122, 1131, 1138, 1178, 1191, 1245, 1298, 1346, 1398, 1409, 1434, 1449, 1465, 1547, 1563). In any event, the entire incident in no way militated against respondents' right to bring forth their side of the case. *Subin* case, *supra*, 112 F. (2d) at 332; *Bethlehem Steel Co.* case *supra*, 120 F. (2d) at 651-652.

⁸ But cf. e. g., R. 825, 841, 842, 858, 885, 891, 892, 893, 900 955, 956, 957, 961, 965-966, 1018, 1019, 1021, 1023, 1026, 1027, 1029, 1031, 1048, 1059, 1074, 1077, 1085, 1090, 1098, 1106, 1113, 1121, 1122, 1125, 1134, 1138, 1152, 1162, 1169, 1171, 1172, 1183, 1184, 1187, 1188, 1189, 1190, 1195, 1197, 1198, 1199, 1203, 1232, 1234, 1236, 1238, 1239, 1240, 1246, 1256, 1272, 1281, 1282, 1284, 1285, 1298, 1299, 1321, 1323, 1331, 1350, 1353, 1372, 1376, 1383, 1393, 1395, 1416, 1421, 1423, 1425, 1433, 1440, 1444, 1465, 1486, 1488, 1516, 1769, 1771, 2679, 2745, 2750, 2757, 2758, 2759, 2771, 2773, 2794.

961, 1051, 1067, 1084, 1169, 1178, 1226, 1253, 1275, 1276–1278, 1280, 1297, 1486, 1524–1525, 1977, 2049, 2056–2067, 2366, 2461, 2575, 2614, 2783, 2801, 2926, 2939–2940, 2991, 3075, 3080, 3181, 3193, 3206, 3257, 3322).

(e) The speciousness of respondents' contentions are graphically illustrated by their objection to the participation in the proceedings of E. F. Prior, the Union's business representative. Prior appeared as a party of record on behalf of the Union (R. 694). The Act and the Board's rules and regulations provide for such participation (Section 10 (b) of Act; Article II, Section 25 of Board's Rules and Regulations), which was in no respect prejudicial to respondents. *Consumers Power Company v. N. L. R. B.*, 113 F. (2d) 38, 42 (C. C. A. 6).

(f) Nor is there any merit to the contention that the Trial Examiner's prejudice is displayed by his conclusions and recommendations in his Intermediate Report. "Simply because the Examiner * * * failed to agree with the contentions of the Company in every instance does not convict [him] of bad faith or arbitrary conduct. [His] good faith in conducting the proceedings is further attested to by the fact that in [some of the charges he] agreed with the Company and absolved it of unfair labor practices." *N. L. R. B. v. Gallup American Coal Company*, 11 L. R. R. 415, 416 (C. C. A. 10), decided November 5, 1942 (R. 159–160).

That the actions of the Trial Examiner did not militate in any substantial manner against the right

of respondents to adduce their defenses, is borne out by the entire record and by respondents' failure to petition the Board or this Court for leave to adduce additional evidence under Section 10 (e) of the Act, as they should have done had they felt aggrieved. *Consolidated Edison Co. v. N. L. R. B.*, 305 U. S. 197, 226; *Jefferson Electric Co. v. N. L. R. B.*, 102 F. (2d) 949, 955 (C. C. A. 7); *Swift & Co. v. N. L. R. B.*, 106 F. (2d) 87, 91 (C. C. A. 10). Moreover, respondents failed to move to disqualify the Trial Examiner, "the effective means for eliminating bias and prejudice where, in fact, it is believed to exist." *N. L. R. B. v. Baldwin Locomotive Works*, 128 F. (2d) 39, 45 (C. C. A. 3); *N. L. R. B. v. Condenser Corp.*, 128 F. (2d) 67, 80 (C. C. A. 3); and see *Bethlehem Steel Co. v. N. L. R. B.*, 120 F. (2d) 641, 652-653 (App. D. C.).

5. The contention that the Trial Examiner erred in his rulings on admissibility of evidence

Respondents contend (Br. pp. 248-251) that practically all the testimony adduced by the Board was hearsay, that such testimony was improperly admitted, and that the Trial Examiner further erred in refusing to require the production of one of the earlier charges filed with the Board by Organizer Prior. Respondents are clearly in error as to what constitutes hearsay evidence, as is apparent from an examination of the record references cited in the margin.⁹ Moreover,

⁹ E. g., R. 817, 818, 821, 835-836, 837, 856-857, 859, 865, 866, 881, 883, 884, 885, 887, 888, 889, 894, 897, 898, 938, 942, 945, 947, 988, 990, 992, 993, 994, 995, 996, 997-998, 1000, 1005, 1006, 1007, 1008,

hearsay evidence is properly admissible in Board hearings. Section 10 (b) of Act; *N. L. R. B. v. Hearst*, 102 F. (2d) 658, 663 (C. C. A. 9); *Consolidated Edison Co. v. N. L. R. B.*, 95 F. (2d) 390, 395 (C. C. A. 2), aff'd 305 U. S. 197, 230; *N. L. R. B. v. Service Wood Heel Co., Inc.*, 124 F. (2d) 470, 473 (C. C. A. 1). Nor is there any merit to respondents' assertion that the Trial Examiner erroneously failed to require the production of the charge filed July 17, 1938. The ruling was clearly within the Trial Examiner's discretion. Cf. *Jefferson Electric Co. v. N. L. R. B.*, 102 F. (2d) 949, 954 (C. C. A. 7). Moreover, even if any of the Trial Examiner's rulings on the admission of evidence be regarded as erroneous, which we dispute, the errors were in no event prejudicial on any material issue; hence such error, if any, is not reversible. *Wilson & Co. v. N. L. R. B.*, 103 F. (2d) 243, 245 (C. C. A. 8); *N. L. R. B. v. Cities Service Oil Co.*, 129 F. (2d) 933, 936 (C. C. A. 2); *Subin v. N. L. R. B.*, 112 F. (2d) 326, 332 (C. C. A. 3); *N. L. R. B. v. Stackpole Carbon Co.*, 105 F. (2d) 167, 177 (C. C. A. 3), cert. den. 308 U. S. 605; *Bethlehem Steel Co. v. N. L. R. B.*, 120 F. (2d) 641, 651-652 (App. D. C.).

1207, 1208, 1209, 1210, 1211, 1212, 1213, 1214, 1215, 1216, 1218, 1219, 1220, 1222, 1247, 1248, 1250, 1251, 1269, 1271, 1273-1274, 1279, 1283, 1288, 1289, 1290, 1294, 1472, 1474, 1475, 1496, 1499, 1501, 1502, 1511, 1512, 1513, 1514, 1515, 1517, 1518, 1535, 1617, 1618, 1623, 1674, 1675, 1684, 1703, 1704, 1708, 1710, 1741, 1749, 1751, 1779, 1780, 1794, 1842, 1863, 1865, 1880.

CONCLUSION

It is respectfully submitted that the Board's order is valid in all respects and that its enforcement should be decreed.

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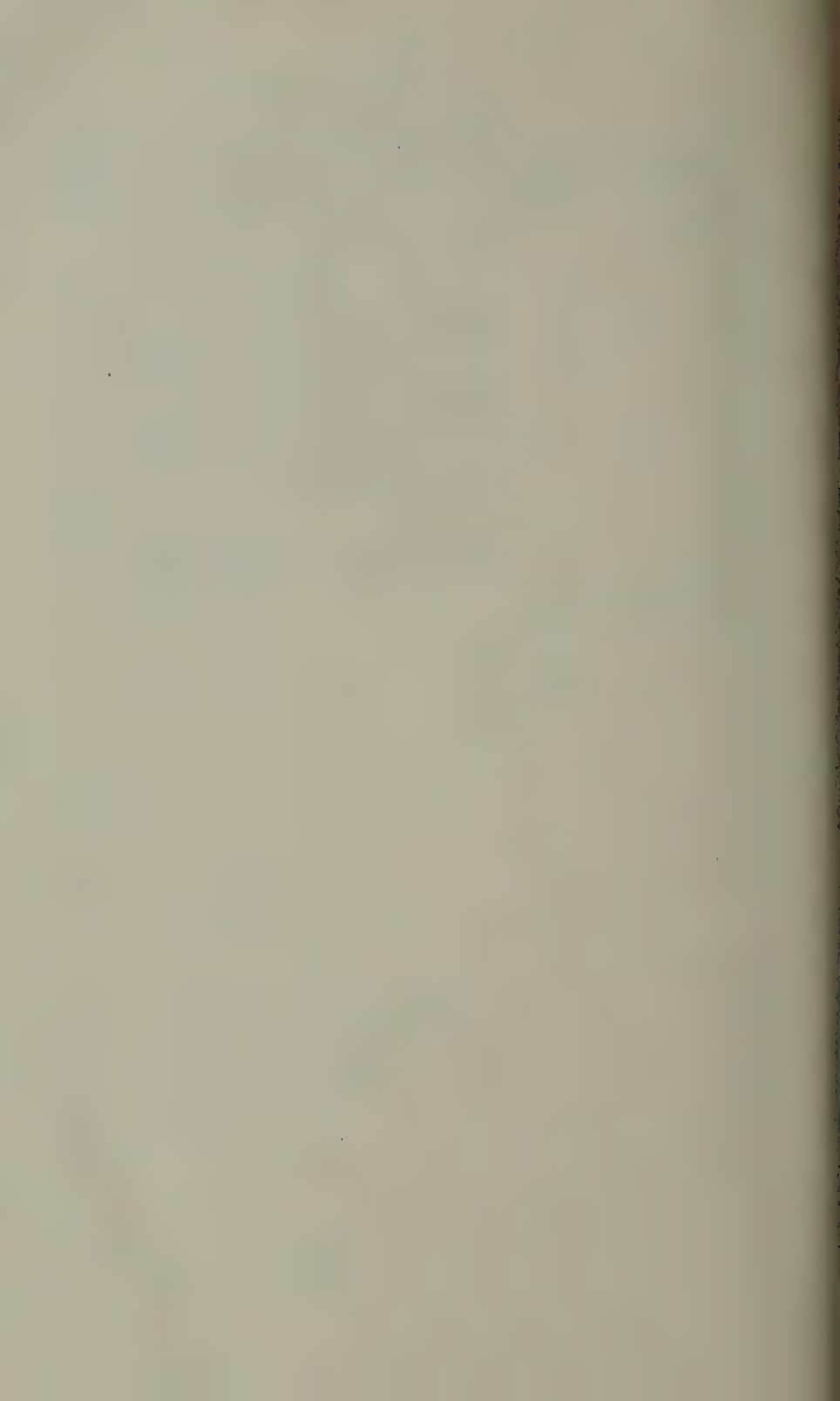
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National Labor Relations Board.

DECEMBER 1942.



No. 10148

IN THE
United States Circuit Court of Appeals
For The Ninth Circuit

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

J. G. BOSWELL COMPANY and CORCORAN
TELEPHONE EXCHANGE,
Respondents.

Upon Petition for Enforcement of Orders of the
National Labor Relations Board.

RESPONDENTS' PETITION FOR A REHEARING

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FILED

JUN 12 1943

PAUL P. O'BRIEN,

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THE QUESTIONS INVOLVED

1. Should an employer which has assumed and repeatedly made known a neutral position with respect to its employees' right to self-organization be penalized by reason of anti-union statements and conduct on the part of subordinate employees who are not authorized to hire or fire or to speak for or bind the employer, and whose lack of such authority is generally known at the plant?

2. Should an employer be compelled to reinstate employees with back pay where the employer's operations are seasonal and there is no work available for them, and notwithstanding such fact their representative demands that they be reinstated in a body and none of such employees subsequently applies for reinstatement when work is available?

3. Is the employer compelled to reinstate an employee who is unwilling to accept employment at the regular wages and hours of work prevailing when he was last employed?

4. When the Board produces no evidence and makes no finding on the matter of potential earnings, is the employer precluded from raising the issue for the first time before the Court?

5. If an employer discharges a single employee who is not a member of any labor organization and has not assisted or attempted to assist any such labor organization and there is no showing that such employee is even sympathetic with a labor organization nor any showing that the discharge of such employee will discourage membership in any labor organization, or burden, obstruct or interfere with interstate commerce, is the employer guilty of violating the Act?

IN THE
United States Circuit Court of Appeals
For The Ninth Circuit

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

J. G. BOSWELL COMPANY and CORCORAN
TELEPHONE EXCHANGE,
Respondents.

Upon Petition for Enforcement of Orders of the
National Labor Relations Board.

RESPONDENTS' PETITION FOR A REHEARING

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Attorneys for Respond-
ents and Petitioners.

TO THE UNITED STATES CIRCUIT COURT OF
APPEALS FOR THE NINTH CIRCUIT, AND
THE HONORABLE WILLIAM DENMAN,
CLIFTON MATHEWS, AND ALBERT LEE
STEPHENS, JUDGES THEREOF:

J. G. Boswell Company and Corcoran Telephone Ex-
change, the respondents herein, after the decision
made and filed on May 24, 1943, and each of them,
respectfully petitions the Court for rehearing upon
the following grounds:

STATEMENT OF GROUNDS UPON WHICH REHEARING IS REQUESTED

I.

Respondent Boswell Company was improperly held responsible by the Board for the unauthorized anti-union statements and acts of its subordinate employees.

II.

None of the employees of respondent Boswell Company whom the Board found should be reinstated were refused reinstatement, and the Board's finding to the contrary was contrary to the evidence.

III.

The order of this Court enforcing the Board's order for the reinstatement by the respondent Boswell Company of Elgin Ely with back pay was erroneous in view of his admitted unwillingness to accept reemployment.

IV.

The matter of potential earnings of the employees of both respondents who were ordered reinstated with back pay should be remanded to the Board for determination even though such issue was not raised before the Board.

V.

The order of this Court directing respondent Exchange to reinstate Mrs. Dunn was erroneous as there was no showing or proof that her discharge affected, burdened, obstructed or interfered with interstate commerce.

ARGUMENT IN SUPPORT OF ABOVE GROUNDS

I.

RESPONDENT BOSWELL COMPANY WAS IMPROPERLY HELD RESPONSIBLE BY THE BOARD FOR THE UN-AUTHORIZED ANTI-UNION STATEMENTS AND ACTS OF ITS SUBORDINATE EMPLOYEES.

The undisputed and uncontradicted evidence in the case against respondent J. G. Boswell Company, hereinafter called Boswell Company, established that the only persons with any authority to employ or discharge employees or to speak or act for the Company on any employment matters were Louis Robinson and Gordon Hammond, and that no other employee at the Corcoran plant had any such authority, and that such fact was well known to and recognized by the employees generally, including the complaining members of the Federal.

Respondent Boswell Company had taken a neutral position with respect to any of its employees joining or not joining a labor organization as they might see fit. This position was repeatedly communicated and made known to the employees as a whole, and particularly to several employees who later joined the Federal. In every instance when an alleged violation of this policy by certain of the so-called supervisory employees was called to the attention of the management, such employees were reprimanded and cautioned against repetition, and it was made clear to them that the respondent had adopted and intended to pursue a neutral policy. The management was scrupulous in trying to maintain its avowed position of neutrality and not only did not oppose the organization

of respondent's employees by Organizer Prior, but on the contrary afforded him every opportunity to obtain applications for membership in his union from such of the employees as desired to join.

Moreover after the organization of the Federal was completed by Mr. Prior, the management cooperated with him and with other representatives of the Federal in trying to provide more employment and keep the Federal members as well as all other employees at work as long as possible even though the cotton season was short and there was an acute lack of work to be performed.

It is important to bear in mind that the respondent Boswell Company's plant at Corcoran is comparatively small and is located in a rather compact unit, and that its operations are purely seasonal. At the period of peak employment in 1938 there were only 86 plant employees, and these employees were much closer to the management than would be the case in the ordinary industrial plant where hundreds or perhaps thousands of men are employed. The situation was entirely different from that prevailing in the ordinary large industrial plant where the management is remote from the rank and file employee, and the carrying out of the policies of the employer, as well as the hiring and firing of employees and the operations of the plant, are left to subordinate employees, such as foremen and straw bosses.

It is clear from all the facts and evidence that respondent Boswell Company did not have any anti-union policy, and that such fact was known to the employees as a whole, and they had no reason for

believing that any anti-union statements on the part of any of the so-called supervisory employees expressed the policy of the company.

We are not unmindful of the fact that the National Labor Relations Act provides that the findings of the Board as to the facts, if supported by evidence, shall be conclusive. The courts have uniformly held, however, that the findings of the Board are not conclusive unless supported by substantial evidence. We respectfully submit and contend that the findings of the Board with respect to the violations of the Act by respondent Boswell Company were not supported by substantial evidence as required by the construction placed upon the Act by the courts.

We are also familiar with the cases which hold the employer responsible for the unauthorized acts and deeds of supervisory employees where the circumstances are such that the employees can reasonably conclude or infer that such acts and deeds represent the attitude of the employer. In view of the fact that the evidence in this case clearly establishes that the management of respondent Boswell Company was not unfriendly toward the union and that no one connected with the respondent other than Louis Robinson and Gordon Hammond were authorized to speak for the respondent on labor matters and policies and that all of the anti-union statements, acts and deeds complained of were made and committed by persons who were wholly unauthorized to speak or act for the respondent, we submit that the respondent as a matter of law cannot be held responsible for the unauthorized acts and statements of its subordinate em-

ployees as held in the following cases, in a number of which the Board's petition for enforcement was denied: **Ballston-Stillwater Knitting Co. v. N.L.R.B.**, 98 Fed. (2d) 758, (C. C. A. 7); **Cupples Co. Manufacturers v. N.L.R.B.**, 106 Fed. (2d) 100, (C. C. A. 8); **N.L.R.B. v. Sands Manufacturing Company**, 306 U.S. 332; 83 L. Ed. 682; **N.L.R.B. v. Empire Furniture Co.**, 107 Fed. (2d) 92, (C.C.A. 6); **N.L.R.B. v. Swank Products**, 108 Fed. (2d) 872, (C. C. A. 3); **C. G. Conn Limited v. N. L. R. B.**, 108 Fed. (2d) 390, (C. C. A. 7); **Peninsular and Occidental S. S. Co. v. N. L. R. B.**; 98 Fed. (2d) 411, (C. C. A. 5); **Martel Mills v. N. L. R. B.**, 114 Fed. (2d) 624, (C. C. A. 4); **N. L. R. B. v. Mathieson Alkali Works, Inc.**, 114 Fed. (2d) 796, (C. C. A. 4); **The Press Co., Inc. v. N. L. R. B.**, 118 Fed. (2d) 937 (Ct. App. D. C. 1940); **E. I. du Pont de Nemours & Co., et al v. N. L. R. B.**, 116 Fed. (2d) 388, (C. C. A. 4); **N. L. R. B. v. Sparks-Withington Co.** 119 Fed. (2d) 78, (C. C. A. 6); **Quaker State Oil Refining Corp. v. N. L. R. B.**, 119 Fed. (2d) 631, (C. C. A. 3); **Diamond T. Motor Car Company v. N. L. R. B.**, 119 Fed. (2d) 978, 982, (C. C. A. 7); **Wilson & Co., Inc. v. N. L. R. B.**, 120 Fed. (2d) 913, (C. C. A. 7).

II.

NONE OF THE EMPLOYEES OF RESPONDENT BOSWELL COMPANY WHOM THE BOARD FOUND SHOULD BE REINSTATED WERE REFUSED REINSTATEMENT, AND THE BOARD'S FINDING TO THE CONTRARY WAS CONTRARY TO THE EVIDENCE.

Six of the seven employees of respondent Boswell Company who were ordered reinstated with back pay, namely, Spear, Martin, Wingo, Andrade, Farr and Powell, were men who left work following the unauthorized anti-union demonstration which occurred at the plant on the morning of November 18, 1938. These six men were all members of the Federal and E. F. Prior as business representative for the Federal represented them as well as the Federal in dealings with the respondent, both before and after such demonstration. After these six men were allegedly evicted on November 18th, Mr. Prior, as shown by the undisputed evidence, had several conferences with the management and demanded that all of these six men be reemployed immediately notwithstanding it was the end of the ginning season, and he knew, and so did the members of the Federal whom he represented, that some of the gins had already closed for the season and others were about to close, and as a consequence there was then no work available for all six of the men unless some of the other few remaining employees, who included a number of members of the Federal, who were still working, were laid off to make positions available for his men. It is an undisputable fact that the management offered to take back one or two of these six men for whom work was

then available, and also offered to take back the rest of them if and when work was available. This offer on the part of the respondent was flatly rejected, and we submit that under the facts respondent Boswell Company was not guilty of violating the Act by reason of its refusal to accede to the unreasonable demands of Mr. Prior, and that the Board's order for reinstatement of these six men is improper and is not supported by any substantial evidence.

Moreover all of the six men above named were in fact carried on the payroll to the end of the time that each of them would normally have been employed up to the close of the season's operations, and they did not suffer any loss of pay whatsoever.

III.

THE ORDER OF THIS COURT ENFORCING THE BOARD'S ORDER FOR THE REINSTATEMENT BY THE RESPONDENT BOSWELL COMPANY OF ELGIN ELY WITH BACK PAY WAS ERRONEOUS IN VIEW OF HIS ADMITTED UNWILLINGNESS TO ACCEPT REEMPLOYMENT.

The Board also directed that Elgin Ely be reinstated with back pay. He had left work a few days before the episode of November 18, 1938, because of an injury to his thumb. The gin upon which he had been working at the time of the injury was shut down on November 26, 1938. Although it was developed at the time of the hearing before the Trial Examiner that he had joined the Federal on November 11, 1938, there was no evidence that the respondent knew of such membership, and the finding of the Board that he was discriminated against was predicated solely upon the fact that on November 26, 1938 the respon-

dent advised him by letter that the job upon which he had been working was completed and that his employment was terminated. Such finding on the part of the Board was merely an inference erroneously arrived at and not based upon or supported by any evidence or facts. We realize the Board has authority under the Act to draw inferences and to base conclusions upon circumstantial evidence, but it seems to us that the evidence should at least be of a substantial character to warrant the court in adopting the Board's finding.

Elgin Ely testified he would accept employment with respondent Boswell Company if ordered reinstated, but negatived such testimony by also testifying that he was not satisfied with his previous employment and was unwilling to return to work for the same pay and at the same hours he had been working when last employed by respondent.

In view of the very flimsy and circumstantial evidence upon which the Board's finding of discrimination was based and Ely's admitted unwillingness to accept reemployment at the wages and hours prevailing when he left work, the order for his reinstatement with back wages was unwarranted and contrary to law and should be set aside by this Court. **Cupples Co. Manufacturers v. N. L. R. B.**, 106 Fed. (2d) 100, 118, (C. C. A. 8).

IV.

THE MATTER OF POTENTIAL EARNINGS OF THE EMPLOYEES OF BOTH RESPONDENTS WHO WERE ORDERED REINSTATED WITH BACK PAY SHOULD BE REMANDED TO THE BOARD FOR DETERMINATION EVEN THOUGH SUCH ISSUE WAS NOT RAISED BEFORE THE BOARD.

The Board failed to find either in the case against Boswell Company or in that against Corcoran Telephone Exchange, hereinafter called Exchange, as to whether any of the employees of the respective respondents who were ordered reinstated had made any effort to obtain other substantially equivalent employment, or whether they had refused such employment when offered. The evidence showed that several of the Boswell Company employees who were ordered reinstated were for several months engaged in picketing activities at said respondent's plant after their employment terminated, in an attempt to enforce a boycott against the respondent and its products notwithstanding no strike had been declared. Obviously they were making no effort to find other employment.

It is true that neither of the respondents raised this particular question in any of their proceedings before the Board, and that the Act provides (Section 10 (e)) that "no objection that has not been urged before the Board, its member, agent or agency, shall be considered by the Court unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances." The issue of the potential earnings of each of the employees ordered

reinstated was, however, raised by each of the respondents in this Court in their answer to the Board's petition for enforcement. The Supreme Court expressly held in **Phelps Dodge Corp. v. N. L. R. B.**, 313 U. S. 177, 198-201, that such issue was properly raised before the Court and in the absence of a finding thereon by the Board, the matter should be remanded to the Board for determination. The Supreme Court in this regard stated:

"Since only actual losses should be made good, it seems fair that deductions should be made not only for actual earnings by the worker but also for losses which he willfully incurred. To this the Board counters that to apply this abstractly just doctrine of mitigation of damages to the situations before it, often involving substantial numbers of workmen, would put on the Board details too burdensome for effective administration. Simplicity of administration is thus the justification for deducting only actual earnings and for avoiding the domain of controversy as to wages that might have been earned.

"But the advantages of a simple rule must be balanced against the importance of taking fair account, in a civilized legal system, of every socially desirable factor in the final judgment. The Board, we believe, overestimates administrative difficulties and underestimates its administrative resourcefulness The matter should have been left to the Board for determination by it prior to formulating its order and should not be

left for possible final settlement in contempt proceedings.....

"The decree below should be modified in accordance with this opinion, remanding to the Board the two matters discussed under Fourth and Fifth herein, for the Board's determination of these issues."

The same rule was followed in each of the following cases which were decided after the **Phelps Dodge** case: **N. L. R. B. v. Suburban Lumber Co.**, 121 Fed. (2d) 829, 834, (C. C. A. 3); **N. L. R. B. v. Newberry Lumber & Chemical Co.**, 123 Fed. (2d) 831, 839, (C. C. A. 6); **Corning Glass Works v. N. L. R. B.**, 129 Fed. (2d) 969, C. C. A. 2).

The present case therefore should be remanded to the Board for a determination of whether or not any of the employees ordered reinstated made an effort to find other substantially equivalent employment after their employment with the respective respondents was terminated.

V.

THE ORDER OF THIS COURT DIRECTING RESPONDENT EXCHANGE TO REINSTATE MRS. DUNN WAS ERRONEOUS AS THERE WAS NO SHOWING OR PROOF THAT HER DISCHARGE AFFECTED, BURDENED, OBSTRUCTED OR INTERFERED WITH INTERSTATE COMMERCE.

The case against respondent Exchange so far as we have been able to ascertain presents a novel situation, both as to the facts and the law.

Only one employee, Mrs. Dunn, is involved. All the operations of the Exchange are local. It has only

about 300 subscribers, and a gross annual income of only approximately \$15,000.00. There are only six or seven employees. There is no labor dispute involved and no labor organization of any kind at its plant. Mrs. Dunn, whom the Board found was discriminated against and was ordered reinstated with back pay, was not a member of any labor organization, was not eligible to membership in the Federal which was organized at the Boswell Company plant, and according to her own testimony, which was corroborated by the testimony of her husband, she never assisted or even attempted to assist any labor organization of any kind. In fact there was no evidence that she was even sympathetic to labor organizations in general, or to the Federal in particular. The Board found that respondent Boswell Company was not responsible for her discharge by the Exchange, and that the Exchange in discharging her did not act either directly or indirectly in the interest of respondent Boswell Company. The only possible connection between the labor trouble at the Boswell Company plant and her discharge by the Exchange was the fact that upon one occasion her daughters had gone to the picket line at the Boswell Company plant where they talked for a few minutes with Organizer Prior. Mrs. Dunn herself was the first one to apprise Mr. Glenn, the manager of the Exchange, that her daughters had gone to the picket line, and she explained to him the purpose of their visit, which had nothing whatever to do with the labor trouble at the Boswell plant or with any labor organization.

The Exchange was charged in the complaint with

having discharged Mrs. Dunn because of her suspected union activities. The evidence showed conclusively that Mrs. Dunn had not engaged in any union activities of any kind or character, and there was an utter lack of any evidence which would show or even tend to show that Mr. Glenn suspected her of any such activities.

The Board based its finding of discrimination solely upon a statement alleged to have been made by Mr. Glenn to the effect that pressure had been brought to bear upon him by certain unnamed business men in Corcoran to discharge Mrs. Dunn; and the Board inferred from purely circumstantial evidence that such pressure was the consequence of Mrs. Dunn's two daughters having been seen at the picket line when talking with Mr. Prior. Opposed to this flimsy circumstantial evidence was the direct and positive testimony of Mr. Glenn that no pressure of any kind had been brought to bear upon him by anyone to discharge Mrs. Dunn because of the picket line incident, and that even though such pressure had been brought to bear upon him, he would not under any circumstances have discharged her for said reason. He also testified that the only pressure ever exerted upon him by anyone to have her discharged was complaints made by certain subscribers that she was incompetent and was not rendering them efficient service. He also testified definitely and positively that she was discharged solely for a number of specified causes, all of which were valid and proper reasons for discharging any employee, and his testimony as to the

reasons for her discharge was in many material respects fully substantiated and corroborated by the testimony of other witnesses.

We respectfully submit and contend that regardless of any jurisdictional question, the Board's finding of a violation of the Act by the Exchange and its order for reinstatement of Mrs. Dunn was wholly unsupported by any substantial evidence and is contrary to law.

The Board in support of its legal position in this matter cited several cases, the holdings of which were substantially as follows: That it is an unfair labor practice for an employer to refuse to employ a person solely because such person belongs to a labor organization; that it is an unfair labor practice for an employer to discharge an employee because he mistakingly believes the employee is a union member or is engaged in union activities; and that it is improper for an employer to discharge an employee solely because the employee's union activities extend outside his own employment. The Board, however, failed to cite any decisions which cover the facts of the instant case, and all the cases cited by the Board are, as shown by our brief heretofore filed, readily distinguishable.

It is well established that mere conjecture and suspicion that an employee is discharged because of union activities or suspected union activities where there is evidence that the employee was discharged for cause are not sufficient to support a finding of discrimination. **N. L. R. B. v. Thompson Products Inc.**, 97 Fed. (2d) 13, 17 (C. C. A. 6); **Cupples Co. v. N. L. R.**

B., 106 Fed. (2d) 100, 118, (C. C. A. 8); **Burlington Dyeing & F. Co. v. N. L. R. B.**, 104 Fed. (2d) 736, 739 (C. C. A. 4); **Cudahy Packing Co. v. N. L. R. B.**, 116 Fed. (2d) 367, 371 (C. C. A. 8).

In the case against the Exchange there was an entire lack of any evidence either direct or circumstantial that the discharge of Mrs. Dunn would or did in anywise affect, burden, obstruct or interfere with interstate commerce. The Board contends that the Exchange being an instrumentality of interstate commerce, the discharge of one of its employees would automatically have such result. We submit, however, that no such result followed her discharge, and that Congress when passing the National Labor Relations Act did not intend that it should have the construction or application which is now contended for by the Board. We find light on the wording and intent of the Act in House of Representatives Report No. 1147, 74th Congress, First Session (1935). We quote from the report at page 10:

“The definitions in subsections 6 and 7 are intended as the basic jurisdictional definitions as used in their appropriate settings in Sections 9 and 10. The bill is based squarely on the power of Congress to regulate commerce among the several states and with foreign nations. It does not apply to controversies or practices of purely local significance, which do not presently or potentially burden or obstruct the free flow of such commerce.

“The Committee Amendment to subsection 6

narrows the definition of interstate commerce by not making it extend to transportation or communication that is merely 'related to' interstate commerce. This change has been made in view of the doubts that the Schechter Case casts upon the validity of regulating practices that are merely 'related to' or 'indirectly' interstate commerce.

"The new definition inserted by the Committee Amendment to subsection 7 also helps to confine the bill to the proper sphere under the Schechter decision by removing from its purview practices which merely 'affect' interstate commerce. Under this Amendment the bill is confined to practices 'burdening or obstructing' interstate commerce. These words have received repeated recognition in court decisions as fit bases for Federal jurisdiction."

The Board also found that the discharge of Mrs. Dunn automatically had the effect of discouraging "membership in the Federal as well as in labor organizations generally." It is impossible to perceive how under the facts of this case her discharge could possibly have such result, particularly in view of the fact that she, herself, admitted that she was not a member of any union and had never assisted or attempted to assist any union, and there was no evidence whatever that she was either interested in any union or was even sympathetic with any union. The Board also contends that even though her discharge did not have the effect of discouraging membership in any union, it might have the possible effect of dis-

couraging her from subsequently joining a union. This contention, however, is without any support in the evidence and facts of this case.

If the Board's theories and contentions in this case are correct, the discharge of any employee by an employer who is engaged in interstate commerce would ipso facto have the effect of burdening, obstructing and interfering with the free flow of interstate commerce, and would also have the effect of discouraging the discharged employee from thereafter availing himself of his right of self-organization. We submit that such unnatural and illogical result was not intended by Congress and is not a proper construction of the Act and is contrary to law.

We have carefully read and analyzed the authorities cited by the Board in support of its position, but fail to find therein any holding which bears directly upon the precise question even by analogy. The presumption is that the employer has not violated the law, and the burden of proof is upon the Board to show that an employee has been discriminatorily discharged. **N. L. R. B. v. Union Mfg. Co.**, 124 Fed. (2d) 332, 333, (C. C. A. 5); **N. L. R. B. v. Goshen Rubber & Manufacturing Co.**, 110 Fed. (2d) 432.

We submit that in the instant case the Board has failed to overcome the presumption of innocence and to sustain its burden of proof, particularly as regards the Exchange, and that the Court upon a rehearing of this case should as a matter of law deny enforcement of the Board's orders.

CONCLUSION

Wherefore, each of the respondents respectfully prays that its petition for a rehearing be granted, and that the decision heretofore rendered be annulled as to each of the respondents for the reasons hereinbefore set forth.

Dated: Hanford, California, June 10, 1943.

SIDNEY J. W. SHARP,
M. WINGROVE,
Attorneys for Respondents
and Petitioners.

CERTIFICATE OF COUNSEL.

I hereby certify that I am of counsel for respondents and petitioners in the above entitled cause and that in my judgment the foregoing petition for a rehearing is well founded in point of law as well as in fact and that said petition for a rehearing is not interposed for delay.

Dated, Hanford, California,

June 10, 1943.

M. WINGROVE,

Of Counsel for Respondents
and Petitioners.

